

OFFICIAL COURT DOCUMENTS

VOLUME 1

Scientology v. Armstrong

Various Courts

NO.	DATED	PARTY	COURT & CASE NO.	DOCUMENT NAME
1.	11/16/94	COURT	LA Superior BC 052395	Ruling on Matter Taken Under Submission on May 27, 1992
2.	9/18/95	Armstrong	Marin Superior 157680	Defendant's Opposition to Motion for Summary Adjudication on the Twentieth Cause of Action
3.	10/17/95	COURT	Marin Superior 157680	Order of Permanent Injunction
4.	6/3/97	COURT	Marin Superior 152229	Bench Warrant
5.	8/6/97	COURT	Marin Superior 152229	Bench Warrant
6.	11/18/97	CSI	CA Ct. Appeal 1 st Appellate District A 075027	Motion to Dismiss Appeal, MPA in Support Thereof, and Wilson Dec in Support
7.	5/15/98	COURT	Marin Superior 152229	Bench Warrant
8.	2/2/04	CSI	Marin Superior CV 021632	Plaintiff Church of Scientology International's Motion in Limine to Exclude Evidence of Armstrong's Affirmative Defenses
9.	4/2/04	CSI	Marin Superior CV 021632	Church of Scientology International's Issue Conference Statement
10.	4/8/04	Armstrong	Marin Superior CV 021632	Defendant's Opposition to Motion in Limine
11.	4/8/04	Armstrong	Marin Superior CV 021632	Substitution of Attorney
12.	4/8/04	CSI	Marin Superior CV 021632	Plaintiff Church of Scientology International's Objection to All Evidence
13.	4/9/04	CSI	Marin Superior CV 021632	Reply Memorandum and Motion to Strike Opposition to Motion in Limine of Defendant Gerald Armstrong
14.	4/12/04	COURT	Marin Superior 152229	Notice of Case Reassignment

LATE

COPY

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GERALD ARMSTRONG

FILED

APR - 8 2004

JOHN P. MONTGOMERY,
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
BY: T. KEOVANXAT, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Plaintiff,

vs.

GERALD ARMSTRONG,

Defendant.

CASE NO.: CV 021632

DEFENDANT'S OPPOSITION TO
MOTION IN LIMINE

Date: April 9, 2004

Time: 9:00 a.m.

Dept: L

I. INTRODUCTION

CSI presents its instant in limine motion in search of an order which would prevent Gerald Armstrong from defending against its \$6.55 million claim for 131 internet postings, in effect asking for little more than a judicial rubber stamp so as to obtain such an outrageous result.

Based on res judicata principles CSI asserts that Armstrong is collaterally estopped from asserting any defense and therefore the Court must exclude any evidence with respect to any of Armstrong's defenses

Armstrong's position is that the Court's discretion is not as limited as Scientology contends. Mr. Armstrong opposes CSI's motion in limine on the primary ground of public policy and injustice.

II. LEGAL DISCUSSION

"Under traditional rules of res judicata, a party may be barred ('collaterally estopped') from relitigating issues that were previously adjudicated in an earlier proceeding." (*Wittman v. Chrysler Corp.* (1988) 199 Cal.App.3d 586, 591, 245 Cal.Rptr. 20.) The rule of res judicata "is to prevent vexatious litigation and to require the parties to rest upon one decision in their controversy." (*Miller & Lux Inc. v. James*, 180 Cal. 38, 44[, 179 P. 174].) "[A] final judgment on the merits in a prior action is conclusive between the same parties in a subsequent action involving the same subject matter." (*Hamilton v. Carpenter*, 15 Cal.2d 130, 133[, 98 P.2d 1027].)" (*Boucher v. Kriehn* (1947) 80 Cal.App.2d 437, 441, 182 P.2d 218.) Res judicata bars "not only the reopening of the original controversy, but also subsequent litigation of all issues which were or could have been raised in the original suit. [Citations.]" (*Gates v. Superior Court, supra*, 178 Cal.App.3d at p. 311, 223 Cal.Rptr. 678.)"

(*Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 821)

There are, however, a public interest and unfairness exceptions to the rule of res judicata. (*Greenfield v. Mather* (1948) 32 Cal.2d 23, 35) When the issue in a question of law rather than of fact, the prior determination is conclusive either if injustice would result or if the public interest requires that re-litigation not be foreclosed. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64) The public interest exception to res judicata is not confined to cases concerning public agencies, nor does it require that the initial determination of an issue be "erroneous." (*Kopp v. Fair Political Practices Com'n* (1995) 11 Cal.4th 607, 622, fn. 16)

This case presents weighty public policy issues regarding the free exercise of religion, the prohibition against establishing a religion and free speech. Therefore, a full airing of the issues and evidence is appropriate.

Here we have a powerful, grandiose and paranoid religion whose "fair game" policy shares "some parallels in purpose and effect" with the practice of the inquisition of the Middle

1 Ages which "targeted 'heretics' who threatened the dogma and institutional integrity of the
2 mother church." (*Wollersheim v. Church of Scientology* (1989) 212 Cal.App.3d 872, 888)

3 For over 20 years Scientology has deemed Armstrong to be "fair game" and sought to
4 neutralize him. The instant lawsuit is a judicial application of that policy.

5 "Commencing in February 1982, the international Church of Scientology issued a
6 series of "suppressive person declares" in effect labeling Armstrong an enemy of the
7 Church and charging that he had taken an unauthorized leave, was spreading
8 destructive rumors about senior Church officials, and secretly planned to leave the
9 Church. These "declares" subjected Armstrong to the "Fair Game Doctrine" of the
10 Church, which permits a suppressive person to be "tricked, sued or lied to or destroyed
11 ... [or] deprived of property or injured by any means by any Scientologist...."

12 (*Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 1067)

13 CSI's contract claim masks its genuine agenda, the judicial enforcement of its
14 religious doctrine of retribution designed to neutralize one particularly unrepentant heretic.

15 If Armstrong was a Catholic in the Middle Age, would it be appropriate for a Court to
16 execute a \$50,000 consequence each time Armstrong were to publicly object to, expose and
17 discuss Scientology's "neutralization" of heretics by "incarceration, torture and death"?

18 (*Wollersheim, supra*, 212 Cal.App.3d at 888)

19 As the judicial enforcement of religious dogma offends the anti-establishment clause
20 of the First Amendment, Armstrong submits there is a strong public policy interest in such
21 enforcement, if it is to occur at all, not taking place automatically because we long have held
22 the "awareness of the historical fact that governmental established religions and religious
23 persecution go hand in hand." (*Engle v. Vitale* 370 U.S. 421, 432)

24 In addition to the question of the constitutional impropriety of allowing a
25 demonstrably vindictive religion to use the courts to implement its policy of punishment,
public interest values are further impacted. Perhaps more than any other topic due to
religion's propensity to disseminate noxious doctrine, religious matters merit protection of

1 speech in public.¹

2 It cannot be seriously argued that the imposition of liquidated damages of \$50,000 per
3 internet posting does not function as a publicly punitive measure intended to deter speech
4 about Scientology. 131 postings will bring the total to \$6.55 million. This result is so
5 monstrously intimidating that it cannot help but suppress public discussion regarding
6 Scientology's nature, morality, practices and position in the delicate balance of our
7 constitutional democracy.

8 In *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628 Scientology was
9 found to use the litigation system as a tool to destroy its enemies.

10 Declarations of former members and officials of the Church, Gerald Armstrong and
11 Vicki Aznaran, revealed the practices and policies of the Church, including its "fair
12 game" doctrine and employment of litigation practices designed "to bludgeon the

13 ¹ Probably the best articulation of the public interest function of free speech was by Justice
14 Brandeis in *Whitney v. California*, 274 U.S. 357, 375 where he wrote:

15 Those who won our independence believed that the final end of the state was to make
16 men free to develop their faculties, and that in its government the deliberative forces
17 should prevail over the arbitrary. They valued liberty both as an end and as a means.
18 They believed liberty to be the secret of happiness and courage to be the secret of liberty.
19 They believed that freedom to think as you will and to speak as you think are means
20 indispensable to the discovery and spread of political truth; that without free speech
21 and assembly discussion would be futile; that with them, discussion affords ordinarily
22 adequate protection against the dissemination of noxious doctrine; that the greatest
23 menace to freedom is an inert people; that public discussion is a political duty; and
24 that this should be a fundamental principle of the American government. They
25 recognized the risks to which all human institutions are subject. But they knew that
order cannot be secured merely through fear of punishment for its infraction; that it is
hazardous to discourage thought, hope and imagination; that fear breeds repression;
that repression breeds hate; that hate menaces stable government; that the path of
safety lies in the opportunity to discuss freely supposed grievances and proposed
remedies; and that the fitting remedy for evil counsels is good ones. Believing in the
power of reason as applied through public discussion, they eschewed silence coerced
by law-the argument of force in its worst form. Recognizing the occasional tyrannies
of governing majorities, they amended the Constitution so that free speech and
assembly should be guaranteed.

1 opposition into submission,” as well as attacks against judges who rule against it. The
2 declaration of an attorney who had represented the Church (Joseph A. Yanny),
3 submitted in an action brought by the Church against him and others, related aspects
4 of the Church's “fair game” doctrine, including copies of exhibits to demonstrate “the
Cult, according to written policy, will use any means legal or illegal to subvert and
frustrate judicial process against them, and will willingly and knowingly abuse judicial
process in order to attack perceived ‘enemies.’”

5 (*Id.*, at 641-642) It was therefore an appropriate subject for dismissal pursuant to the anti-
6 SLAPP statute.

7 Given some of Scientology’s litigation history, its desire to intimidate and censor is
8 apparent. Scientology has a clearly manifest policy of suppressing speech about it. Indeed,
9 the policy would seem to be the more accurate the speech, the greater its compulsion to censor
10 and suppress it, eliminating it from the marketplace of ideas.

11 In *Church of Scientology v. Siegelman* (1979) 475 F.Supp. 950 Scientology sued the
12 author of a book entitled *Snapping: America’s Epidemic Of Sudden Personality Change* for
13 defamation in connection with comments he made on a television interview show. The
14 statements dealt with the “alleged debilitating physical and psychological effect certain
15 actions by the Church of Scientology have on its members.” (*Id.*, at 953) The case was
16 dismissed.

17 In *United States v. Heldt* (1981) 668 F2d 1238 the court reviewed indictments and
18 guilty pleas of high ranking Scientologists who were convicted by means of a Stipulation of
19 Evidence which detailed their substantive offenses. The indictments were “for completed
20 conspiracies and substantive offenses involving their plan to identify, locate and obtain by
21 various illegal means certain documents in the possession of the United States which were
22 related to Scientology, and their efforts thereafter to obstruct justice by thwarting the
23 government’s investigation of such criminal activities, by harboring and concealing a fugitive
24 from arrest, and by causing the making of false declarations under oath before a grand jury.”
25 (*Id.*, at 1241) The court noted that “those who formulate conspiracies to obstruct justice, steal

1 government property, burglarize, bug, harbor fugitives from justice, and commit and suborn
2 perjury before the grand jury have no constitutional right under the first amendment to
3 conceal documentary evidence thereof.” The court asserted “freedom of religion is not
4 endangered **but encouraged** when criminal conspiracies are suppressed that attempt to hide
5 behind religion.” (*Id.*, at 1258)

6 In *Church of Scientology v. Cazares* (1981) 638 F.2d 1272, Scientology sued the
7 former mayor of Clearwater for defamation in connection with comments by the mayor
8 regarding Charles Manson’s alleged history in Scientology, his opposition to bringing a
9 “helter-skelter world and philosophy” to Clearwater, his dislike for “paramilitary religious
10 organizations” and that Scientology “was not a religious organization as ‘religion’ was
11 understood in the Clearwater area, but a ‘rip-off, money motivated operation.’” Summary
12 judgement dismissal was affirmed. (*Id.*, at 1287-1288)

13 In *Church of Scientology v. Commissioner of Internal Revenue* (1984) 83 T.C. 381 in
14 an extremely lengthy opinion, the court found “When we consider all the facts spread across
15 the voluminous record in this case, we are left with the inescapable conclusion that one of
16 petitioner's overriding purposes was to make money. We also conclude that criminal
17 manipulation of the IRS to maintain its tax exemption (and the exemption of affiliated
18 churches) was a crucial and purposeful element of petitioner's financial planning. (*Id.*, at 504-
19 505)

20 In *New Era Publications International v. Henry Holt and Co.* (1989) 873 F.2d 576
21 Scientology unsuccessful sought to enjoin the publication of a book entitled *Bare-Faced*
22 *Messiah: The True Story Of L. Ron Hubbard*.

23 In *United States v. Zolin* (1989) 109 S.Ct. 2619, 105 L.Ed.2d 469 the Court addressed
24 whether the attorney-client privilege between Scientology and some of its attorneys should be
25 abrogated on the basis “that the legal service was sought or obtained in order to enable or aid

1 the client to commit or plan to commit a crime or tort.” (*Id.* at 2630, 105 L.Ed.2d at 489) The
2 Supreme Court reversed the Ninth Circuit's ruling in *United States v. Zolin* (9th Cir. 1987)
3 809 F.2d 1411 that the Government had not made a sufficient showing that there had been
4 “illegal advice ... given by [Scientology] attorneys to [Scientology] officials” to invoke the
5 crime-fraud exception to the attorney-client privilege. Upon reversing and remanding, the
6 Supreme Court ordered the Ninth Circuit to review partial transcripts of the tape recording
7 sought by the IRS in a criminal investigation of Scientology to determine whether the crime-
8 fraud exception to the privilege applied. On remand, this the Ninth Circuit held:

9 The partial transcripts demonstrate that the purpose of the [Mission Corporate
10 Category Sort Out] project was to cover up past criminal wrongdoing. The MCCS
11 project involved the discussion and planning for future frauds against the IRS, in
12 violation of 18 U.S.C. & 371. [citation.] The figures involved in MCCS admit on the
13 tapes that they are attempting to confuse and defraud the U.S. Government. The
14 purpose of the crime-fraud exception is to exclude such transactions from the
15 protection of the attorney-client privilege.

13 (*United States v. Zolin* (9th Cir. 1990) 905 F.2d 1344, 1345. *cert. denied*, *Church of*
14 *Scientology v. United States* (1991) 111 S.Ct. 1309)

15 In *Hart v. Cult Awareness Network* (1993) 13 Cal.App.4th 777 the underlying facts
16 pertained to Scientology’s ultimately successful effort to destroy the Cult Awareness Network
17 whose purpose was to “educate the public about the harmful effects of mind control as
18 practiced by destructive cults and about the unethical or illegal practices they employ.” As a
19 harassment measure pursuant TO having been identified by Scientology as a “suppressive
20 group” a CAN representative received almost 500 letters from Scientologists to join CAN.
21 Upon CAN’s refusal, lawsuits followed.

22 There is a substantial public interest in trying CSI’s claims against Armstrong with the
23 full benefit of his defenses.
24

1 Although the rule is based upon the sound public policy of limiting litigation by
2 preventing a party *who has had one fair trial on an issue* from again drawing it into
3 controversy, the "policy must be considered together with the policy that a party shall not be
4 deprived of a fair adversary proceeding in which fully to present his case." (*Jorgensen v.*
5 *Jorgensen*, [1948] 32 Cal.2d 13, 18[, 193 P.2d 728].)

6 For example, the Restatement Second of Judgments, section 27 states:

7 "When an issue of fact or law is actually litigated and determined by a valid and final
8 judgment, and the determination is essential to the judgment, the determination is
9 conclusive in a subsequent action between the parties, whether on the same or a
different claim." (Rest.2d Judgments (1982) § 27.)

10 The key operative phrase within the Restatement is the term "actually litigated." When
11 no issues have been "drawn into controversy" by a "full presentation" of the case, the policy
12 favoring one fair trial on the issue is not served. (*Teitelbaum Furs, Inc. v. Dominion Ins. Co.,*
13 *Ltd.*, 58 Cal.2d 601, 606)

14 *Teitelbaum* addresses the circumstances of a criminal guilty plea and the plaintiff's
15 effort to use it in subsequent civil litigation for res judicata purposes. The court said that
16 when a party who had pleaded guilty to a criminal charge seeks to litigate his cause in a civil
17 action, collateral estoppel was inappropriate in light of considerations of fairness to civil
18 litigants and a regard for the expeditious administration of criminal justice.

19 While losing a summary judgment motion is not the same as pleading guilty to a
20 crime, in the circumstances of this case the values raised are of substantial policy weight and
21 necessary in order to avoid a harsh result.

22 Armstrong never had a trial. Even though the settlement agreement upon which CSI
23 brought this suit contains language of mutuality, and one of Scientology's counsel who
24 negotiated said agreement testified in a declaration that the "gag" conditions went both ways,
25 Judge Thomas ruled as a matter of law that there was no issue of fact to be tried. This is a

1 legal, not a factual determination. Therefore, CSI's motion in limine must be denied.

2
3 DATED: Thursday, April 08, 2004

HUB LAW OFFICES

4
5
6 By

Ford Greene, Esq.

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

DEFENDANT'S OPPOSITION TO MOTION IN LIMINE

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew H. Wilson, Esq.
475 Gate Five Road, Suite 212
Sausalito, CA 94965

ALSO BY FAX

☒ (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

☐ (Federal Express) I caused such envelope to be overnight by Federal Express to the address above

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: Thursday, April 08, 2004

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5 CHURCH OF SCIENTOLOGY INTERNATIONAL

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **FOR THE COUNTY OF MARIN**

8 CHURCH OF SCIENTOLOGY
INTERNATIONAL, A California nonprofit
9 religious corporation,

10 Plaintiff,

11 vs.

12 GERALD ARMSTRONG, an individual; and
DOES 1 THROUGH 50, inclusive,

13 Defendants.
14 _____
15
16
17
18

Case No.: CV 021632

**CHURCH OF SCIENTOLOGY
INTERNATIONAL'S ISSUE
CONFERENCE STATEMENT**

Trial Date: April 9, 2004
Time: 9:00 a.m..
Dept.: L

19 Plaintiff, the Church of Scientology International ("Plaintiff" or "Church"), submits the
20 following Issue Conference Statement pursuant to Local Rule § 1.23(C).

21 **STATEMENT OF FACTS, LAW AND CONTENTIONS OF PARTIES**

22 **1. STATEMENT OF FACTS**

23 On December 6, 1986, Church and Armstrong entered into a Mutual Release of All Claims
24 and Settlement Agreement ("Agreement"), which resolved and settled the case entitled *Church of*

25 *Scientology International v. Armstrong*, Case No. C 420153. In consideration for a payment of
26 approximately \$800,000.00, Armstrong made various covenants, including the following contained
27 in paragraph 7(D) of the Agreement:
28

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

1 Plaintiff agrees never to create or publish, or attempt to publish, and/or assist
2 another to create for publication by means of magazine, article, book or other
3 similar form, any writing or broadcast or to assist another to create, write, film or
4 video tape or audio tape any show, program or movie, or to grant interviews or
5 discuss with others, concerning their experiences with the Church of Scientology, or
6 concerning their personal or indirectly acquired knowledge or information
7 concerning the Church of Scientology, L. Ron Hubbard or any of the organizations,
8 individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he
9 will maintain strict confidentiality and silence with respect to his experiences with
10 the Church of Scientology and any knowledge or information he may have
11 concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations,
12 individuals or entities listed in Paragraph 1 above Plaintiff agrees that if the
13 terms of this paragraph are breached by him, that CSI and the other Releases would
14 be entitled to liquidated damages in the amount of \$50,000 for each such breach.

15 After spending the funds paid to him, Armstrong began breaching the Agreement. Plaintiff
16 filed a breach of contract action against Armstrong which was finally determined in this Court in
17 the case entitled *Church of Scientology International v. Armstrong*, Case Nos. 152229 and 157680
18 (Consolidated Action).

19 In the Consolidated Action, Plaintiff sought liquidated damages pursuant to the terms of the
20 Agreement, as well as injunctive relief to prevent any future breaches of the Agreement by
21 Armstrong, including breaches of paragraph 7(D) of the Agreement. Armstrong, represented by
22 counsel, cross-complained against Plaintiff in the Consolidated Action challenging the validity of
23 the Agreement on a number of grounds, including violation of the First Amendment, illegality and

18 duress.

19 On October 17, 1995, following a motion for summary adjudication of issues brought by
20 the Church against Armstrong, this Court entered an Order of Permanent Injunction in the
21 Consolidated Action finding that:

22 "1. Plaintiff and defendant freely and voluntarily entered into a Mutual Release of
23 All Claims and Settlement Agreement in December, 1986.

24 2. Plaintiff performed all of its obligations pursuant to the Agreement.

25 3. Defendant Armstrong received substantial consideration for the promises
26 which he made in the Agreement.

27 4. Since 1990, defendant Armstrong has repeatedly breached paragraphs
28

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

1 7(D)...

2 9. Defendant Armstrong has reiterated numerous times that he intends to continue
3 breaching the Agreement unless he is ordered by the Court to cease and desist . . .

4 10. Plaintiff's legal remedies are inadequate insofar as the scope of the relief
5 ordered below is concerned . . .

6 Accordingly, the Court finds that entry of a permanent injunction in this action is
7 necessary in this action because pecuniary compensation could not afford the
8 Church adequate relief, and the restraint is necessary in order to prevent a
9 multiplicity of actions for breach of contract."

10 Thereafter, the court permanently enjoined Armstrong from "doing directly or indirectly

any of the following:"

"Facilitating in any manner the creation, publication, broadcast, writing, filming, audio recording, video recording, electronic recording or reproduction of any kind of any book, article, film, television program, radio program, treatment, declaration, screenplay or other literary, artistic or documentary work of any kind which discusses, refers to or mentions Scientology, the Church and/or any of the Beneficiaries (which includes Plaintiff herein, CSI);

5. Discussing with anyone, not a member of Armstrong's immediate family or his attorney, Scientology, the Church, and/or any of the Beneficiaries (including CSI)."

The Court subsequently entered summary judgment against Armstrong in the amount of \$300,000.00 and also entered a final judgment.

2. FACTUAL AND LEGAL CONTENTIONS IN DISPUTE

Armstrong does not dispute the execution of the Agreement, that he received substantial consideration for his promises, or that he has breached the agreement on thousands of occasions since the Agreement was entered into. Most significantly, Armstrong does not dispute, and in fact admits in his Answer, that he committed the 201 breaches of the Agreement alleged in the Complaint. Despite this admission,, and in order to streamline the trial, Plaintiff will move and seek recovery for only the 131 breaches which were adjudicated in the prior action.

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

Armstrong raises a plethora of affirmative defenses, contending the Agreement was not entered into under Armstrong's own free will but was procured by fraud and duress, that the Agreement is unenforceable and that the Orders entered by the Hon. Gary W. Thomas enforcing

the Agreement, including the Permanent Injunction entered against Armstrong and the contempt citation against Armstrong for his violation of the injunction, were the result of a criminal conspiracy between the Church, its attorneys and Judge Thomas.

Plaintiff contends that the Order of Permanent Injunction (Exhibit 7) and the Final Judgment (Exhibit 8) conclusively determined these issues. Armstrong is collaterally estopped from relitigating them. See *Pinewood Investors v. City of Oxnard*, 133 Cal.App.2d 3d 1030 (1982); *Savage v. Pacific Gas & Electric Co.* 21 Cal.App.4th 434 (1993). *Weil & Brown*, Civil Procedure Before Trial, Section 10:20, at p.10-7, Rutter Group (2003). *First N.B.S. Corp. v. Gabrielsen*, 179 Cal.App.3d 1189, (1986); *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.*, 58 Cal.2d 601 (1962); *Bernhard v. Bank of America*, 19 Cal.2d 807 (1942); *City of Los Angeles v. City of San Fernando*, 14 Cal.3d 199 (1975); *Henn v. Henn*, 26 Cal.3d 323 (1980).

3. DAMAGES

The Agreement provides for liquidated damages of \$50,000.00 for each breach. This provision was found to be valid by Judge Thomas in the Prior Action. Plaintiff's Exhibit 6, pg. 2.

4. LEGAL AND EVIDENTIARY ISSUES

The principal legal issue is the application of the doctrine of collateral estoppel to prevent relitigation of the following issues: (1) Whether Armstrong committed the acts which Plaintiff alleges constituted breaches of the Agreement; (2) Whether those acts are breaches of the Agreement; (3) Whether Armstrong has viable affirmative defenses.

Plaintiff does not anticipate any evidentiary issues. Plaintiff's Exhibits 1-12 consist of pleadings and other court filings of which judicial notice can be taken. Exhibits 13-143 are copies of emails and/or internet postings made by Mr. Armstrong, whose authenticity has never been questioned and in any event which are presumptively accurate pursuant to Evidence Code § 1500.5(c).

5. MATTERS OF FACT APPROPRIATE FOR STIPULATION

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

1 Plaintiff submits that Armstrong's commission of the acts of breach alleged in the
2 Complaint are appropriate for stipulation. Armstrong's Answer admits that he committed these
3 acts, and Armstrong has stated publicly that he has breached the Agreement on numerous
4 occasions.

5 6. LIST OF WITNESSES

6 Plaintiff does not anticipate the need for any witnesses, unless it becomes necessary to
7 refute any evidence that the copies submitted as Exhibits 13-143 are not accurate or authentic.

8 7. LIST OF EXHIBITS

9 Exhibit 1: Mutual Release of All Claims and Settlement Agreement.

10 Exhibit 2: Complaint filed in *Church of Scientology International v. Armstrong* , Case No.
11 152229.

12 Exhibit 3: Complaint filed in *Church of Scientology International v. Armstrong*, Case No.
13 157680.

14 Exhibit 4: Answer of Gerry Armstrong in the Consolidated Action.

15 Exhibit 5: Certified copy of Armstrong's Cross-Complaint in the cases entitled *Church of*
16 *Scientology International v. Armstrong*, Case No. 152229 and *Church of Scientology International*
17 *v. Armstrong*, Case No. 157680.

18 Exhibit 6: Order of Summary Judgment as to the 13th, 16th, 17th and 19th Causes of
19 Action.

20 Exhibit 7: Order of Permanent Injunction dated October 17, 1995, entered in *Church of*
21 *Scientology International v. Armstrong*, Case No. 157680.

22 Exhibit 8: Judgment dated May 2, 1996, entered in *Church of Scientology International v.*

23 *Armstrong*, Case No. 152229.

24 Exhibit 9: *Ex Parte* Application for Order to Show Cause re: Contempt.

25 Exhibit 10: Armstrong's Opposition to Order to Show Cause.

26 Exhibit 11: Order of Contempt issued in the Consolidated Action, dated July 13, 2001.

Breach
Numbers 27

27 Exhibit 12: Answer of Gerry Armstrong, Case No. 021632.

28 Exhibit 13: March 1998 posting by Armstrong in response to Roland Rashleigh-Berry.

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

1 Armstrong describes his alleged experiences when he worked in Public Relations in Scientology in
2 the 1970s.

② 3 Exhibit 14: March 5, 1998 posting by Armstrong in which he posts a derogatory affidavit
4 which he had written regarding Scientology that he had submitted to Revenue Canada.

③ 5 Exhibit 15: May 21, 1998 posting by Armstrong critical of the Church of Scientology.

④ 6 Exhibit 16: May 22, 1998 posting by Armstrong which includes a declaration by
7 Armstrong, filed in another case, in which he discusses his alleged background in Scientology and
8 makes various accusations against the Church.

⑤ 9 Exhibit 17: July 16, 1998 posting by Armstrong critical of the Church and Church
10 executives.

⑥ 11 Exhibit 18: August 27, 1998 posting by Armstrong critical of Mr. Hubbard and his
12 schooling.

⑦ 13 Exhibit 19: September 5, 1998 posting by Armstrong regarding the dismissal of his lawsuit
14 against CSI in Nevada, his status as a fugitive from justice, and his criticism of the California
15 justice system.

16 **(8)** Exhibit 20: September 24, 1998 posting by Armstrong regarding Grady Ward, a copyright
17 infringer against the Church, where Armstrong wants to meet Ward and discuss their litigation and
18 have Ward testify against the Church in Armstrong's opposition to a finding of his contempt of
19 court.

(9) 20 Exhibit 21: September 25, 1998 posting by Armstrong offering to be an expert witness for
21 Grady Ward in the suit brought against Ward for violating copyrights of Scientology materials.

(10) 22 Exhibit 22: September 30, 1998 posting by Armstrong critical of Scientology spiritual
23 practices.

(11) 24 Exhibit 23: November 17, 1998 posting by Armstrong of his declaration claiming that the
25 Church caused him to be detained by police in San Anselmo, California.

(12) 26 Exhibit 24: November 27, 1998 posting by Armstrong where he claims that no one who has
27 communicated with him has been sued or will be sued pursuant to the injunction against him.
28 Armstrong admits that he has communicated with other media entities and individuals about

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

1 Scientology and his experiences.

(13) 2 Exhibit 25: December 24, 1998 posting by Armstrong where he talks about setting up a
3 national level debate or hearing about Scientology.

(14) 4 Exhibit 26: December 24, 1998 posting by Armstrong suggesting that a compilation of
5 letters critical of the Church be given out at future protests or to the media.

(15) 6 Exhibit 27: January 8, 1999 posting by Armstrong in response to posting by Ralph Hilton,
7 another former Scientologist whom Armstrong allegedly knew, discussing Armstrong's
8 recollection of events from his days in the Church.

- 9 (16) Exhibit 28: January 12, 1999 posting by Armstrong in which he comments on past postings
10 he made about Scientologists.
- 11 (17) Exhibit 29: January 12, 1999 posting by Armstrong responding to Rick Larsen, concerning
12 a personality test used in Scientology churches.
- 13 (18) Exhibit 30: January 12, 1999 posting by Armstrong about a fire that occurred when
14 Armstrong was in one church in Clearwater, Florida.
- 15 (19) Exhibit 31: January 12, 1999 posting by Armstrong responding to "John D.", saying he is
16 writing a book critical of Scientology, and criticizing the Permanent Injunction.
- 17 (20) Exhibit 32: January 16, 1999 posting by Armstrong critical of Scientologists making
18 donations for religious service.
- 19 (21) Exhibit 33: January 18, 1999: posting by Armstrong, as a continuation of the previous
20 posting, comparing Scientology and Christianity.
- 21 (22) Exhibit 34: February 22, 1999 posting by Armstrong discussing ARS and how it is a hot
22 bed of anti-Scientology sentiments and it "is bringing the gospel" to Scientologists.
- 23 (23) Exhibit 35: February 22, 1999 posting by Armstrong attempting to provoke a "response"
24 from the psychiatric community against the Church.
- 25 (24) Exhibit 36: March 6, 1999 posting by Armstrong re his experiences with William
26 Broderick who he knew when they were both in Scientology.
- 27 (25) Exhibit 37: March 17, 1999 posting by Armstrong responding to Rob Clark, and explaining
28 what one of Armstrong's positions was when he was a Church staff member.

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

- 1 (26) Exhibit 38: March 20, 1999 posting by Armstrong which quotes an attacker of the Church.

2 (27) Exhibit 39: March 21, 1999 posting by Armstrong with a number of reasons why he claims
3 Scientology won't succeed.

4 (28) Exhibit 40: March 21, 1999 posting by Armstrong where he describes actions he allegedly
5 performed during a project while working on Church staff.

6 (29) Exhibit 41: March 22, 1999 Posting by Armstrong where he makes allegations about Vicki
7 Aznaran, a former Scientologist who sued the Church and later settled.

8 (30) Exhibit 42: March 28, 1999 posting by Armstrong re Mr. Hubbard's military service which
9 Armstrong supposedly knew about and which was mentioned in his earlier litigation with the
10 Church.

11 (31) Exhibit 43: March 28, 1999 posting by Armstrong of the Settlement Agreement signed on
12 3-19-99 in a suit brought by Scientology entities for copyright infringement, including Armstrong's
13 own comments about Scientology and that case.

14 (32) Exhibit 44: April 2, 1999 posting by Armstrong critical of a Church executive.

15 (33) Exhibit 45: April 3, 1999 posting by Armstrong attacking the Church and its news journal,
16 Freedom Magazine.

17 (34) Exhibit 46: April 3, 1999 posting by Armstrong criticizing certain Scientology practices
18 and writings.

19 (35) Exhibit 47: April 4, 1999 posting by Armstrong criticizing Mr. Hubbard.

20 (36) Exhibit 48: April 4, 1999 posting by Armstrong regarding documents he allegedly saw
21 while he was a Church staff member.

22 (37) Exhibit 49: April 7, 1999 posting by Armstrong regarding a web page allegedly put up by
23 Scientologists.

24 (38) Exhibit 50: April 11, 1999 posting by Armstrong stating that opposition to "Scientology the
25 religion" and distribution of their Asacred scriptures is protected religious expression and pickets
26 are tax deductible religious contributions.

27 (39) Exhibit 51: April 19, 1999 posting by Armstrong concerning a Church staff member from

28 the early 1980's.

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

- 1 (40) Exhibit 52: April 20, 1999 posting by Armstrong containing allegations about Mr.
- 2 Hubbard.
- 3 (41) Exhibit 53: April 20, 1999 posting by Armstrong commenting on a letter from Grady Ward
- 4 to a Church attorney, including allegations about his own settlement with the Church.
- 5 (42) Exhibit 54: April 20, 1999 posting by Armstrong ridiculing certain Scientology beliefs.
- 6 (43) Exhibit 55: April 20, 1999 posting by Armstrong denigrating Scientology and its
- 7 leadership.
- 8 (44) Exhibit 56: April 22, 1999 posting by Armstrong concerning the alleged handling of PR
- 9 and legal matters by Church officials.
- 10 (45) Exhibit 57: April 27, 1999 posting by Armstrong containing various accusations against
- 11 Scientologists.
- 12 (46) Exhibit 58: May 1, 1999 posting by Armstrong concerning alleged actions by
- 13 Scientologists.
- 14 (47) Exhibit 59: May 2, 1999 posting by Armstrong commenting on the settlement of a suit
- 15 between Dennis Erlich and Scientology entities.
- 16 (48) Exhibit 60: May 4, 1999 posting by Armstrong advocating public hearings on Scientology.
- 17 (49) Exhibit 61: May 8, 1999 posting by Armstrong in which he guesses how much Dennis
- 18 Erlich received in his settlement with the Church.
- 19 (50) Exhibit 62: May 24, 1999 posting by Armstrong responding to Carol Eidge and offering to
- 20 help remove her children from Scientology.

- 21 (51) Exhibit 63: May 24, 1999 posting by Armstrong concerning an individual who was
22 allegedly involved in Scientology in the 1950's and 60's.
- 23 (52) Exhibit 64: June 3, 1999 posting by Armstrong commenting about the IRS having granted
24 tax exemption to Scientology churches.
- 25 (53) Exhibit 65: June 6, 1999 posting by Armstrong about an alleged former Scientologist.
- 26 (54) Exhibit 66: June 6, 1999 posting by Armstrong giving advice to another Internet poster and
27 offering his own experience in Scientology as an example.
- 28 (55) Exhibit 67: June 15, 1999 posting by Armstrong giving legal advice to a person in relation

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

- 1 to Scientology. 28
- 2 (56) Exhibit 68: June 16, 1999 posting by Armstrong suggesting a demonstration at the
3 governor's office in Sacramento against Scientology.
- 4 (57) Exhibit 69: June 28, 1999 posting by Armstrong in which he makes allegations about
5 Scientology management and suggests various actions to be taken against it.
- 6 (58) Exhibit 70: June 30, 1999 posting by Armstrong containing various allegations about
7 Scientology.
- 8 (59) Exhibit 71: July 1, 1999 posting by Armstrong concerning alleged forgeries by
9 Scientologists on the Internet.
- 10 (60) Exhibit 72: July 4, 1999 posting by Armstrong concerning an early Scientologist, whom he
11 interviewed when he was a Church staff member.
- 12 (61) Exhibit 73: July 7, 1999 posting by Armstrong concerning his time in Scientology.
- 13 (62) Exhibit 74: July 11, 1999 posting by Armstrong offering himself as a percipient and expert

14 witness in a civil suit against a Scientology church.

15 (63) Exhibit 75: July 12, 1999 posting by Armstrong about searching for documents relevant to
16 litigation against the Church.

17 (64) Exhibit 76: July 17, 1999 posting by Armstrong about a "solution to the Scientology
18 problem".

19 (65) Exhibit 77: July 18, 1999 posting by Armstrong about the "Asporgeries" on the Internet and
20 various accusations about Scientologists.

21 (66) Exhibit 78 July 20, 1999 posting by Armstrong concerning his experiences on Church staff
22 and Scientologists' beliefs about Mr. Hubbard.

23 (67) Exhibit 79: July 20, 1999 posting by Armstrong concerning writings by Mr. Hubbard.

24 (68) Exhibit 80: August 8, 1999 posting by Armstrong concerning apostate Stacy Brooks; suing
25 a senior Scientology church; upper Scientology management and the corporate structure of the
26 Church.

27 (69) Exhibit 81: August 9, 1999 posting by Armstrong containing allegations about how the
28 Church deals with its opponents.

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

1 (70) Exhibit 82: August 9, 1999 posting by Armstrong about Mr. Hubbard.

2 (71) Exhibit 83: August 9, 1999 posting by Armstrong commenting on statements by Mr.
3 Hubbard about drugs.

4 (72) Exhibit 84: August 17, 1999 posting by Armstrong in which he reposts a letter by attacker
5 Garry Scarff regarding an attorney who represents him in legal matters concerning the Church.

6 (73) Exhibit 85: August 17, 1999 posting by Armstrong concerning Mr. Hubbard and quoting

- 7 from Scientology scripture.
- 8 (74) Exhibit 86: August 17, 1999 posting by Armstrong about some of his alleged experiences
- 9 in the Church.
- 10 (75) Exhibit 87: August 17, 1999 posting by Armstrong about a declaration he wrote concerning
- 11 Scientology.
- 12 (76) Exhibit 88: August 18, 1999 posting by Armstrong promoting books critical about
- 13 Scientology.
- 14 (77) Exhibit 89: September 10, 1999 posting by Armstrong commenting on postings about
- 15 others' alleged experiences in Scientology.
- 16 (78) Exhibit 90: September 12, 1999 posting by Armstrong about posters who are critical of
- 17 Scientology.
- 18 (79) Exhibit 91: September 16, 1999 posting by Armstrong concerning an essay contest
- 19 sponsored by Robert Minton for critics of Scientology and whether Armstrong should participate.
- 20 (80) Exhibit 92: September 28, 1999 posting by Armstrong criticizing Mr. Hubbard and
- 21 Scientology scripture.
- 22 (81) Exhibit 93: September 28, 1999 posting by Armstrong criticizing Scientologists.
- 23 (82) Exhibit 94: September 29, 1999 posting by Armstrong urging Scientologists to get out of
- 24 Scientology.
- 25 (83) Exhibit 95: September 30, 1999 posting by Armstrong asserting that Scientology is not
- 26 spiritual.
- 27 (84) Exhibit 96: October 1, 1999 posting by Armstrong saying he does many things to get
- 28 Scientologists to leave Scientology.

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

- 1 (85) Exhibit 97: October 1, 1999 posting by Armstrong about Scientologists' ethics.
- 2 (86) Exhibit 98: October 1, 1999 posting by Armstrong criticizing a senior Scientologist.
- 3 (87) Exhibit 99: October 2, 1999 posting by Armstrong concerning folders used in connection
- 4 with Scientology counseling.
- 5 (88) Exhibit 100: October 2, 1999 posting by Armstrong alleging he has documentation
- 6 concerning use of Scientology counseling folders.
- 7 (89) Exhibit 101: October 2, 1998 posting by Armstrong concerning the Scientology church in
- 8 Belgium.
- 9 (90) Exhibit 102: October 2, 1999 posting by Armstrong about getting anti-Scientology
- 10 literature passed around.
- 11 (91) Exhibit 103: October 2, 1999 posting by Armstrong in which he responds to derogatory
- 12 statements of another regarding Scientology practices.
- 13 (92) Exhibit 104: October 7, 1999 posting by Armstrong making contemptuous statements about
- 14 Scientology organizations.
- 15 (93) Exhibit 105: October 7, 1999 posting by Armstrong about Scientology scriptures being
- 16 posted on the Internet.
- 17 (94) Exhibit 106: October 7, 1999 posting by Armstrong about hate sites on the Internet and
- 18 attempting to get a Scientologist to leave the Church.
- 19 (95) Exhibit 107: October 9, 1999 posting by Armstrong about people who he believes work for
- 20 the Church.
- 21 (96) Exhibit 108: October 9, 1999 posting by Armstrong in which he posts a news release
- 22 announcing the judgment entered against him in Marin County for breaching the settlement
- 23 agreement with the Church, along with his comments on this.
- 24 (97) Exhibit 109: October 12, 1999 posting by Armstrong about asking questions to a new
- 25 Scientology web site.

- 26 (98) Exhibit 110: October 12, 1999 posting by Armstrong offering to send someone a write up
27 on what he had read in Mr. Hubbard's unpublished book "Excalibur."
28 (99) Exhibit 111: November 1, 1999 posting by Armstrong responding to Bob Minton's

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

- 1 description of his arrest in Clearwater, Florida on charges of committing battery against a
2 Scientologist.
3 (100) Exhibit 112: November 2, 1999 posting by Armstrong attempting to blame Scientologists
4 for Minton being arrested.
5 (101) Exhibit 113: November 6, 1999 posting by Armstrong about the Church's alleged attempts
6 to deal with critics.
7 (102) Exhibit 114: November 29, 1999 posting by Armstrong saying that the Church and its
8 leaders are unfair.
9 (103) Exhibit 115: December 1, 1999 posting by Armstrong regarding a news reporter who has
10 written about the Church in the past.
11 (104) Exhibit 116: December 9, 1999 posting by Armstrong talking about the picketing he
12 recently participated in Clearwater, and the speeches delivered by Church antagonists.
13 (105) Exhibit 117: December 25, 1999 posting by Armstrong in which he defends Bob Minton
14 and makes derogatory statements about Scientology beliefs.
15 (106) Exhibit 118: December 30, 1999 posting by Armstrong in which he answers questions
16 about a person he knew in Scientology in the 70s.
17 (107) Exhibit 119: December 30, 1999 posting by Armstrong in which he posts a portion of the
18 Congressional Record containing requests for the US to resolve the religious discrimination in

19 Germany. Armstrong enters his own negative comments about Scientology.

20 (108) Exhibit 120: December 31, 1999 posting by Armstrong speaking derogatorily about

21 Scientology and saying that the Scientology organizations and technology should be dismantled.

22 (109) Exhibit 121: December 31, 1999 posting by Armstrong in which he claims he is an expert

23 in the subject of Scientology.

24 (110) Exhibit 122: January 3, 2000 posting by Armstrong recounting alleged incidents from when

25 he was a Church staff member.

26 (111) Exhibit 123: January 3, 2000 posting by Armstrong regarding mental illness and

27 Scientology.

28 (112) Exhibit 124: January 3 2000 posting by Armstrong agreeing with another poster's criticisms

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

1 of the Church.

2 (113) Exhibit 125: January 3, 2000 posting by Armstrong in which he makes comments regarding

3 another poster's version of what occurred within the Church after Mr. Hubbard's death.

4 (114) Exhibit 126: January 4, 2000 posting by Armstrong stating that he would never embrace

5 destroying Scientology as it is an impossibility and commenting on what he believes are the goals

6 of Scientology.

7 (115) Exhibit 127: January 5, 2000 posting by Armstrong continuing derogatory comments about

8 Scientology.

9 (116) Exhibit 128: January 5, 2000 posting by Armstrong about psychiatrists and the handling of

10 psychotic people, including accusations regarding Scientology practices.

11 (117) Exhibit 129: January 6, 2000 posting by Armstrong in which he discusses "stalking" and

12 that he kept a big sign in his storefront window "Is Scientology Stalking You?"

13 118 Exhibit 130: January 6, 2000 posting by Armstrong referencing Lisa McPherson Trust and
14 how Scientology is trying to destroy it.

15 119 Exhibit 131: January 16, 2000 posting by Armstrong in which he re-posts the mission
16 statement for the "Lisa McPherson Trust," and affirms his agreement with this anti-Scientology
17 statement.

18 120 Exhibit 132: January 19, 2000 posting by Armstrong responding to a posting by Rod Keller
19 regarding the Church's facility in Clearwater, Florida.

20 121 Exhibit 133: January 19, 2000 posting by Armstrong in which he states that "Freedom of
21 religion includes the freedom to condemn all of Scientology."

22 122 Exhibit 134: January 24, 2000 posting by Armstrong regarding an affidavit filed in a suit
23 against the Church.

24 123 Exhibit 135: January 29, 2000 posting by Armstrong containing derogatory statements and
25 accusations about the Church.

26 124 Exhibit 136: January 29, 2000 posting by Armstrong claiming that he used to be a liar
27 when he was a Scientologist.

28 125 Exhibit 137: January 30, 2000 posting by Armstrong in which he discusses serving a

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

1 lawsuit on a senior Church executive.

2 126 Exhibit 138: February 19, 2000 posting by Armstrong talking about a position he held
3 when he was a Church staff member.

4 127 Exhibit 139: March 20, 2000 posting by Armstrong to Keith Henson about his legal case

with the Church and how Armstrong was prevented from testifying for Henson. He says he believes "that Judge Whyte is crooked in some way" and "should have found a way to bar Scientology from his courtroom."

128

Exhibit 140: April 16, 2000 posting by Armstrong about going to protest at a Scientology event.

129

Exhibit 141: May 4, 2000 posting by Armstrong continuing various accusations about the Church.

130

Exhibit 142: July 10, 2000 posting by Armstrong in response to another about his settlement agreement which he calls a "gag 'contract'".

131

Exhibit 143: July 11, 2000 posting by Armstrong in response to another in which he makes derogatory allegations about Scientologists.

8. TRIAL LENGTH ESTIMATE

Plaintiff estimates that the trial will require less than 1/2 a day.

April 2, 2004.

Respectfully submitted:

WILSON CAMPILONGO LLP

By: [signed]

Andrew H. Wilson
Attorney for Plaintiff,
CHURCH OF SCIENTOLOGY
INTERNATIONAL

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of Marin, State of California. I am over the age of 18 and not a party to the within action; my business address is 475 Gate 5 Road, Suite 212, Sausalito, California 94965.

On April 2, 2004 I served the foregoing document(s) described as follows:

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE**STATEMENT**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

____ BY U.S. MAIL:

XX BY FEDERAL EXPRESS OR OVERNIGHT COURIER

____ BY HAND DELIVERY

Gerald Armstrong
1UP-45950 Alexander Avenue
Chilliwack, B.C. V2P 1L5
Canada

Executed on April 2, 2004, at Sausalito, California

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this Court at

24 whose direction the service was made.

25

Angela Parker
(Type or Print Name)

[signed] Angela Parker
(Signature)

26

27

28

CHURCH OF SCIENTOLOGY INTERNATIONAL'S ISSUE CONFERENCE STATEMENT

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 2 475 Gate Five Road, Suite 212
 Sausalito, CA 94965-1475
 3 Telephone: (415) 289-7100
 Facsimile: (415) 289-7110

4 Attorneys for Plaintiff,
 5 CHURCH OF SCIENTOLOGY INTERNATIONAL

RECEIVED

APR 05 2004

Ford Greene's
 Hub Law Office

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **FOR THE COUNTY OF MARIN**

8 CHURCH OF SCIENTOLOGY
 INTERNATIONAL, A California nonprofit
 9 religious corporation,

10 Plaintiff,

11 vs.

12 GERALD ARMSTRONG, an individual; and
 DOES 1 THROUGH 50, inclusive,

13 Defendants.
 14 _____

Case No.: CV 021632

**PLAINTIFF CHURCH OF
 SCIENTOLOGY INTERNATIONAL'S
 MOTION IN LIMINE TO EXCLUDE
 EVIDENCE OF ARMSTRONG'S
 AFFIRMATIVE DEFENSES**

Date: April 9, 2004
 Time: 9:00 a.m.
 Dept.: L

Complaint Filed: April 2, 2002
 Trial Date: April 9, 2004

18 **INTRODUCTION**

19 Defendant Gerald Armstrong ("Armstrong") answered the Complaint herein, admitting the
 20 commission of the 201 breaches of contract asserted therein and asserting forty four affirmative
 21 defenses. They are identical to the forty three affirmative defenses which he raised in defending
 22 the prior action ("Prior Action") which Plaintiff brought to recover for breach of the very
 23 agreement at issue here, save for the addition of a defense based on the Thirteenth Amendment. In
 24 the Prior Action, this Court adjudicated those defenses against Armstrong, entered a permanent

25 injunction, a final judgment and an order holding Armstrong in contempt for violation of the
26 injunction. Armstrong's subsequent appeal was dismissed. Accordingly, Plaintiff hereby moves
27 for an order precluding the introduction of any evidence on those affirmative defenses on the
28 ground that Armstrong those defenses were either raised and adjudicated against Armstrong

PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
ARMSTRONG'S AFFIRMATIVE DEFENSES

1 in the Prior Action or are based on facts which were alleged by Armstrong in that action and could
2 have been raised by Armstrong in the Prior Action. Thus, Armstrong is collaterally estopped from
3 relitigating them as defenses to this action.

4 **ARGUMENT**

5 **A. The Facts Upon Which Armstrong's Affirmative Defenses are Based Were**
6 **Alleged and At Issue in the Prior Action and the Affirmative Defenses Raised There Are**
7 **Virtually Identical to those Raised Here.**

8 Armstrong's Answer in the Prior Action asserted forty three affirmative defenses, which
9 Mr. Armstrong also asserts here. Compare Plaintiff's Exhibits 3 and 11. The Answer in this
10 action, Exhibit 11, repeats what Armstrong has repeatedly alleged since the Prior Action was filed:
11 The Agreement was signed under duress; Armstrong's counsel was pressured, and in turn
12 pressured Armstrong, into signing the Agreement by telling Armstrong that it was unenforceable;
13 The Agreement was procured by fraud; The Agreement is illegal because it infringes on
14 Armstrong's First Amendment rights; The Agreement violates Armstrong's right to freedom of
15 religion, because his religion, the Church of Wogs, exists to fight Scientology.

16 All of these defenses and the factual assertions upon which they were based were
17 adjudicated against Armstrong in the Prior Action. There, Judge Thomas granted the Church's

18 motion for summary judgment, ruling that the Agreement was not entered into under duress, not
19 induced by fraud, did not fail for lack of mutuality, did not infringe on First Amendment rights,
20 and that the liquidated damages provision was valid. Plaintiff's Exhibit 6, pg. 2, ln. 19 - pg. 4, ln.
21 12. The Order of Permanent Injunction entered October 17, 1995 by Judge Thomas provided that
22 the Agreement had been freely and voluntarily entered into, Plaintiff's Exhibit 7, and Judgment
23 was entered on May 2. Plaintiff's Exhibit 8. The Order of Contempt issued by Judge Smith in
24 2001 references the judgment, provides that the Agreement was valid when entered into and
25 remains enforceable and then holds Armstrong in contempt for the 131 breaches upon which
26 Plaintiff seeks to recover here. Plaintiff's Exhibit 11, ¶ 2 at pg. 2, ln. 16.

27 The only new affirmative defense raised by Armstrong is based on the Thirteenth
28 Amendment's abolition of slavery, which is based upon the same facts as the other

PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
ARMSTRONG'S AFFIRMATIVE DEFENSES

1 affirmative defenses.

2 **B. Armstrong is Collaterally Estopped From Litigating Any Affirmative Defenses**
3 **Which Were or Could Have Been Raised in the Prior Action.**

4 The principles of *res judicata* and collateral estoppel, which work to establish the elements
5 of Plaintiff's claim, See, Plaintiff's Issue Conference Statement, Section 2 at pg. 3, Ln. 6-13 and
6 cases cited therein, also apply to preclude introduction of evidence of affirmative defenses based
7 on issues finally adjudicated in prior proceedings. *Torrey Pines Bank v. Superior Court of San*
8 *Diego County*, 216 Cal. App. 3d 813, 821 (1989) [Dismissal with prejudice of action bars
9 assertion of affirmative defenses based on identical facts.]. In *Torrey Pines*, the prior action ended
10 with a dismissal with prejudice, which the Court held sufficient. Here, the prior action ended in a

11 final judgment on the merits after entry of orders granting summary judgment and imposing a
12 permanent injunction. Armstrong's appeal was dismissed.

13 *Torrey Pines* relied on *Hamilton v. Carpenter*, 15 Cal. 2d 130 (1940), in which the Supreme
14 Court stated the applicable rule as follows:

15 It is the general rule, applicable to the facts of this case, that a final judgment
16 on the merits in a prior action is conclusive between the same parties in a
17 subsequent action involving the same subject matter. Such a judgment was
18 tendered in bar of the present affirmative defenses based on the issues thereby
19 determined. When received in evidence it was conclusive between the parties
20 hereto upon those same matters. (citations) The issues of fraud very definitely
21 were litigated by these parties in the prior action, both in the trial court and on
22 appeal, and the court properly refused to receive evidence on the same issues
23 alleged in the affirmative defenses of the defendant herein. Its finding on the
24 issue of res judicata is supported by the judgment roll in the former action
25 which was introduced in evidence in the present action.

26 15 Cal 2d at 133.

27 This rule is directly applicable here. The affirmative defenses alleged here are either
28 identical to those alleged in the Prior Action, or are based on the same facts as those which

PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
ARMSTRONG'S AFFIRMATIVE DEFENSES

1 Armstrong alleged in support of his affirmative defenses in the Prior Action. In fact, whether a
2 particular affirmative defense was actually raised in the Prior Action is of no consequence. When
3 an issue has been litigated, all inquiry respecting the same matter is foreclosed, not only as to

4 matters heard but also to matters that could have been heard in support of or in opposition thereto.
5 Gates v. Superior Court of Los Angeles County, 178 Cal. App. 3d 301, 308 (1986) ["...if the
6 second action involves a right, title or issue as to which the judgment in the first action is a
7 conclusive adjudication, the estoppel so far as that right, title or issue is concerned must likewise
8 extend to every matter which was or might have been urged to sustain or defeat the determination
9 actually made."]

10 CONCLUSION

11 Armstrong's affirmative defenses either were, or could have been, raised by Armstrong in
12 the Prior Action and/or are based upon facts identical to which Armstrong raised in the Prior
13 Action. Either way, he should be precluded from introducing evidence on them.

14 April 2, 2004.

Respectfully submitted:

15 WILSON CAMPILONGO LLP
16
17

18 BY: [signed]
19 Andrew H. Wilson

20 Attorneys for Plaintiff
21 CHURCH OF SCIENTOLOGY
22 INTERNATIONAL
23
24
25
26
27
28

PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF ARMSTRONG'S AFFIRMATIVE DEFENSES

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of Marin, State of California. I am over the age of 18 and not a party to the within action; my business address is 475 Gate 5 Road, Suite 212, Sausalito, California 94965.

On April 2, 2004 I served the foregoing document(s) described as follows:

**PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION IN LIMINE
TO EXCLUDE EVIDENCE OF ARMSTRONG'S AFFIRMATIVE DEFENSES**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

____ BY U.S. MAIL:

XX BY FEDERAL EXPRESS OR OVERNIGHT COURIER

____ BY HAND DELIVERY

Gerald Armstrong
IUP-45950 Alexander Avenue
Chilliwack, B.C. V2P 1L5
Canada

Executed on April 2, 2004, at Sausalito, California

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Angela Parker
(Type or Print Name)

[signed] Angela Parker
(Signature)

23

24

25

26

27

28

PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
ARMSTRONG'S AFFIRMATIVE DEFENSES

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 4 Attorneys for Plaintiff
 5 CHURCH OF SCIENTOLOGY INTERNATIONAL

6
 7
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF MARIN**

11	CHURCH OF SCIENTOLOGY	)	CASE NO. 152229
	INTERNATIONAL, a California	)	
12	not-for-profit religious corporation;	)	BENCH WARRANT
		)	(CIVIL)
13	Plaintiff,	)	
		)	
14	vs.	)	
		)	
15	GERALD ARMSTRONG; DOES 1 through 25,	)	
	inclusive,	)	
16		)	
	Defendants.	)	
17		)	

18
 19
 20
 21 The People of the State of California to any peace officer of this state:

22 On October 17, 1995 this Court entered an Order of Permanent Injunction against
 23 Defendant GERALD ARMSTRONG ("ARMSTRONG"). The Order prohibits ARMSTRONG
 24 from voluntarily assisting any persons litigating claims adverse to the " Beneficiaries" and

25 prohibiting "works" discussing any of the Beneficiaries. The Order was valid. ARMSTRONG
26 had knowledge of the Order. ARMSTRONG has the ability to comply with the Order.
27 ARMSTRONG willfully disobeyed the Order on thirteen (13) separate occasions between
28 September 2, 1997 and November 26, 1997, which were brought to the attention of this court on
December 2, 1997 which on that date issued an Order to Show Cause re Contempt for those

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1 violations. Said OSC re Contempt was heard by the Hon Gary W. Thomas on January 30, 1998
2 and, on February 11, 1998 Judge Thomas signed the SECOND ORDER OF CONTEMPT, a true
3 and correct copy of which is attached hereto and incorporated herein by reference as Exhibit A.

4 YOU ARE THEREFORE ORDERED forthwith to arrest GERALD ARMSTRONG
5 whose last known address: 715 Sir Francis Drake Boulevard, San Anselmo, CA 94960- 1949 and
6 bring him before this Court to show cause why he should not be punished for contempt for
7 disobeying the mandate of this Court.

8 Arrest under this bench warrant may be made at any time of the day or night.

9 Bail is fixed in the sum of \$ 10,000 (and pursuant to the ORDER OF CONTEMPT,
10 including a fine of \$2600.00 and confinement in the County Jail for a period not to exceed 26
11 days).

12 **IT IS SO ORDERED.**

13 Date: 5/15/98

[signed] Vernon F. Smith
JUDGE OF THE SUPERIOR COURT

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CALIFORNIA COURT OF APPEAL

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Plaintiff - Respondent

v.

GERALD ARMSTRONG

Defendant - Appellant.

) Court of Appeal No. A 075027
)
)
) Marin County Superior Court
) No. 157680
) Hon. Gary W. Thomas
) Superior Court Judge
)
)
)
)
)
)

**MOTION TO DISMISS APPEAL, MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF, AND
DECLARATION OF ANDREW H. WILSON IN SUPPORT THEREOF**

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CALIFORNIA COURT OF APPEAL

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DIVISION FOUR

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INTERNATIONAL,

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v.

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Defendant - Appellant.

) Court of Appeal No. A 075027
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) No. 157680
) Hon. Gary W. Thomas
) Superior Court Judge
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**MOTION TO DISMISS APPEAL, MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF, AND
DECLARATION OF ANDREW H. WILSON IN SUPPORT THEREOF**

INTRODUCTION

Plaintiff and Respondent Church of Scientology International moves this Court to dismiss the appeal of Defendant and Appellant Gerald Armstrong on the ground that he has been held to be in ongoing contempt of the very court order from which he seeks to appeal, that he is a fugitive from that court order, and that a bench warrant has been issued by the Superior Court for his arrest pursuant to the order of contempt. Pending determination of this motion, respondent seeks a temporary stay of respondent's

[page break]

obligation to file Respondent's Brief, until, if necessary, thirty days after the determination of this motion by this Court.

This motion is based upon the attached memorandum of points and authorities, the declaration of Andrew H. Wilson and the accompanying exhibits, and the files of record of this case, and such other and further evidence as may properly come before this Court at the hearing of this matter.

Pursuant to California Rules of Court, Appellate Rule 41, any showing in

opposition to this motion shall be served and filed within 10 days after the service of the motion.

Dated: November 18, 1997

Respectfully submitted,

WILSON CAMPILONGO LLP

RABINOWITZ, BOUDIN,
STANDARD, KRINSKY &
LIEBERMAN, P.C.

By: [signed]
Andrew H. Wilson

Attorneys for Plaintiff/Respondent
CHURCH OF SCIENTOLOGY
INTERNATIONAL

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Respondent Church of Scientology International ("Church" or "CSI") moves to dismiss this appeal because Appellant Gerald Armstrong ("Armstrong") has willfully disobeyed the injunctive order from which he appeals and has been held in contempt for that disobedience. "A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state." *MacPherson v. MacPherson* (1939) 13 Cal. 2d 271, 277, 89 P.2d 382. The court below held appellant Gerald Armstrong in contempt of court for willful violation of the permanent injunction which is the subject of this appeal and punished Armstrong by imposing a fine of \$1,000.00 and a term of confinement in the County Jail for a period not to exceed 48 hours. Rather than discharging the contempt order of the Superior Court, or properly noticing a timely appeal from it, Armstrong fled the United States and is prosecuting this appeal from

Canada. The appeal should therefore be dismissed.

THE PROCEEDINGS BELOW

This action arose out of numerous clear and egregious breaches by Armstrong of a settlement agreement (the "Settlement Agreement") he entered into with the Church. In December 1986 the Church sought to end a period of long and bitter litigation with Armstrong, a former member turned professional anti-Scientologist. It paid Armstrong

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\$800,000 and entered into the Settlement Agreement which required Armstrong to end his litigation against the Church, and to refrain from aiding others in litigation, to return to the Church the documents which he had stolen and all copies of them, to refrain from aiding others in litigation, to refrain from discussing with third parties his experiences with the Scientology faith, and to keep confidential all terms of the Settlement Agreement itself. Declaration of Andrew H. Wilson, ¶ 2 (hereinafter Wilson Dec., ¶ ___") These provisions were necessary because, in addition to being a litigant, Armstrong had become a professional expert witness in litigation against the Church, devoting virtually all his time and energy to fomenting litigation against the Church and providing assistance to other persons litigating claims against the Church. *Id*

Unfortunately, the peace which the Church bargained for was short-lived. In 1990, Armstrong conveyed virtually all of his assets to his lawyer and close friends, and then began repeatedly breaching the Settlement Agreement Wilson Dec., ¶ 3. This action was filed in February 1992 in the Superior Court of Marin County (where Armstrong resided) seeking injunctive relief to prohibit further violations and damages for the violations which had occurred. Armstrong was able to delay a motion for preliminary injunction through various procedural maneuvers, including a successful motion to change venue to Los Angeles County.¹ Wilson Dec., ¶ 4. In May, 1992, after

an extensive evidentiary hearing, the Hon. Ronald Sohigian entered a preliminary injunction which prohibited further violations of these key provisions of the Settlement

¹In a later about-face, Armstrong stipulated to transfer of the action back to the Marin County Superior Court where it was assigned to the Hon. Gary Thomas.

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Agreement *Id.* The ink was scarcely dry on Judge Sohigian's order when Armstrong declared his defiance:

A. When I mean, I have, I have absolutely no intention of honoring that settlement agreement. I cannot. I cannot logically. I cannot ethically. I cannot morally. I cannot psychically. I cannot philosophically. I cannot spiritually. I cannot in any way. And it is firmly my intention not to honor it.

Q. No matter what a court says?

A. No court could order it They're going to have to kill me.

Wilson Dec., ¶ 5 and Exh. A thereto.

Armstrong petitioned for a writ of mandate, which was denied and then filed an interlocutory appeal. The Court of Appeal, Second Appellate District, affirmed Judge Sohigian, recognizing that it was quite proper to restrain "... Armstrong's voluntary intermeddling in other litigation against the Church, in violation of his own agreement."

Wilson Dec. ¶ 6 and Exh. B thereto, p.10.

The Church successfully moved for summary adjudication of certain causes of action and was awarded \$300,000. The Church then moved for summary adjudication of its injunctive relief claim, which was granted in October 1995. By his Order of Permanent Injunction dated October 17, 1995, the Hon. Gary Thomas found that Armstrong violated the Settlement Agreement repeatedly. Order of Permanent Injunction (Wilson Decl., Exh. C), at 2 - 6. Finding that "Defendant Armstrong has reiterated numerous times that he intends to contin[ue] breaching the [Settlement]

Agreement unless he is ordered by the Court to cease and desist" and that " entry of a permanent injunction in this action is necessary . . . because pecuniary compensation could not afford the Church adequate relief" (*Id.* at 6), Judge Thomas issued an Order

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of Permanent Injunction enjoining further violations. *Id.* at 7-8. Armstrong then declared bankruptcy and contended that not only was the damage award discharged, but also that he was discharged from all obligations under the Settlement Agreement, including those which prohibited his voluntary intermeddling in litigation against the Church. The Church was required to bring an adversary proceeding in which it established that these obligations were not discharged. Wilson Dec., ¶ 9.

Armstrong's violations of the Settlement Agreement and the Permanent Injunction persisted. On January 26, 1992, Armstrong submitted a 45-page declaration against the Religious Technology Center ("RTC") one of the named Beneficiaries of the Settlement Agreement directly to the Hon. Ronald M. Whyte of the United States District Court for the Northern District of California, who was presiding over a copyright infringement case brought by RTC. The declaration was not properly filed with the Court, although Armstrong gratuitously "served" it on all parties. The goal of this transparent subterfuge was to make the declaration widely available. Wilson Dec., ¶11.² On July 5, 1997, Judge Thomas held Armstrong in contempt of court for this egregious conduct, stating:

ARMSTRONG willfully disobeyed the Order [of Permanent Injunction]. On or about January 26, 1997,

²Armstrong had been only recently warned. Armstrong previously violated the Permanent Injunction when on October 7, 1996, he wrote a long letter to the Los Angeles City Council opposing the naming of a city street after L. Ron Hubbard, the founder of Scientology. He then made the letter available for posting on the Internet.

The Church did not seek an order of contempt for this violation, but instead turned the other cheek and simply warned Armstrong by letter not to commit further violations. The Church's restraint was rewarded by Armstrong's direct submission of the declaration to Judge Whyte. Wilson Dec., ¶¶ 10-11

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ARMSTRONG sent a document entitled DECLARATION OF GERALD ARMSTRONG to United States District Judge Ronald M. Whyte. Judge Whyte was at the time presiding over three cases in which the plaintiff is RTC [one of the Scientology related entities against which Armstrong had agreed not to assist litigants and which was covered by the Permanent Injunction]. In the declaration, ARMSTRONG recites his understanding that he was prohibited from sending such a Declaration directly to litigants and states that he is instead sending it directly to Judge Whyte in the hopes of influencing his decision on a pending matter. This evidences ARMSTRONG's willful disobedience of the Order and Judgment.

Order of Contempt (Wilson Dec., ¶ 12, Exh. F).

Judge Thomas then found that "GERALD ARMSTRONG is guilty of Contempt of Court for failure to obey the Order and Judgment" *Id.* and noted, "the Order was valid and enforceable; ARMSTRONG had knowledge of the Order, and had the ability to comply with the Order and willfully disobeyed the Order." *Id.* Armstrong was ordered punished for contempt by a fine of \$1,000 and forty-eight hours confinement in the county jail. *Id.* at 3. Armstrong did not appeal the Order of Contempt and the time for filing a notice of appeal of that Order has passed.

Rather, in the face of the Order of Contempt, Armstrong fled the United States. He has not paid the \$1,000 fine and he has not submitted to confinement in the county jail. Wilson Dec., ¶ 13. A Beach Warrant issued by Judge Thomas on August 6, 1997 is still outstanding. Beach Warrant, Wilson Dec., *Id.* Indeed, Armstrong continued to defy the Order of Permanent Injunction even after he was found in contempt by the Superior Court. On October 28, 1997, the German television service broadcast an

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interview with Armstrong in which he repeatedly violated the Order of Permanent Injunction. Wilson Decl. I, ¶ 14.

Armstrong's defiance continues before this Court. In his Opening Brief, he boldly reaffirms his refusal to abide by the court's lawful orders and declares (speaking of himself in the third person), "he cannot be silenced by the obstructive [Settlement Agreement], nor by the Marin Court's enforcement." Appellant's Opening Brief at 41. ³

ARGUMENT

Armstrong's appeal should be dismissed because he has refused to comply with the order of the Superior Court in this action. As a contemnor, and now a fugitive, he may not proceed with his appeal. Moreover, while Armstrong cannot be bothered by compliance with the orders of the Superior Court, he is nonetheless willing to place the massive imposition of this appeal on respondent and this Court. The record on this appeal is extensive as evidenced by Armstrong's designation of 224 exhibits, amounting to many thousands of pages, for inclusion in the Clerk's Transcript.⁴ Rather than engage in an unnecessary and unwarranted review of the Superior Court's order (which review would only demonstrate Armstrong's refusal to comply with his own agreement and the Court's orders), this Court should follow established precedent and dismiss Armstrong's

³ Armstrong's Opening Brief is dated August 25, 1997, less than three weeks after the issuance of the Beach Warrant. The brief was mailed from "Chilliwack, B.C., Canada" and Armstrong does not provide his address, but rather it is "care of" someone else. Appellant's Opening Brief, cover and Proof of Service.

⁴In his Opening Brief, Armstrong states that he "has no present access to published California and U.S. law and appellate opinions." Appellant's Opening Brief at 3. Presumably, this is due to his own decision to flee the country.

appeal because he is in open and continuing contempt of the Superior Court order he

seeks to challenge.

The Supreme Court of California held in *MacPherson v. MacPherson* (1939) 13 Cal. 2d 271, 89 P.2d 382, that a father who had fled California to Mexico with his children in violation of the custody arrangements made in his divorce agreement and ordered by the court thereby forfeited his right to appeal the court's order of fees against him in the action. The Court stated:

In secluding the children in a foreign country and alienating them, appellant violated not only his agreement with plaintiff and the provisions of the interlocutory and final decrees of divorce, but he has also wilfully and purposely evaded legal processes and contumaciously defied and nullified every attempt to enforce the judgments and orders of the California courts, including the very order from which he seeks relief by this appeal. Such flagrant disobedience and contempt effectually bar him from receiving the assistance of an appellate tribunal. A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state.

Id. at 277.

Armstrong cannot proceed with his appeal to test the validity of the Permanent Injunction. The law does not give him the right to decide for himself whether or not he will abide by the orders of the courts. As the United States Supreme Court held in an appeal brought by an escaped convict, "If we affirm the judgment, he is not likely to appear to submit to his sentence. If we reverse it and order a new trial, he will appear or not, as he may consider most for his interest. Under such circumstances, we are not inclined to hear and decide what may prove to be only a moot case." *Smith v. United States*, 94 U.S. 97 (1876). As stated by the California Supreme Court in *MacPherson*,

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"until that contempt is purged appellant is not entitled to a hearing before an appellate tribunal." 13 Cal. 2d at 279.

The "disentitlement doctrine" established by *MacPherson* has been routinely

applied to bar litigants such as Armstrong who are in contempt of court from prosecuting their appeal. See *Alioto Fish Co. Ltd v. Alioto* (1994) 27 Cal. App.4th 1669, 34 Cal. Rptr.2d 244, 250-51 ("Although the power to stay or dismiss an appeal is typically exercised when the litigant is formally adjudicated in contempt of court, 'the same principle applies to wilful disobedience or obstructive tactics without such an adjudication'" (quoting 9 *Witkin Cal. Procedure* (3d ed. 1985) Appeal, § 172, p.184); *Say & Say v. Castellano* (1994) 22 Cal. App.4th 95, 27 Cal. Rptr.2d 270, 273 ("It is well established that an appellate court may stay or dismiss an appeal by a party who has refused to obey the superior court's legal orders"); *Stone v. Bach* (1978) 80 Cal. App.3d 442, 145 Cal. Rptr. 599 (appeal of accounting proceeding dismissed where appellant was found in contempt for failing to deposit monies ordered paid into court). The language and reasoning of *Rude v. Rude* (1957) 153 Cal. App.2d 243, 314 P.2d 226 when it dismissed the appeal of a contumacious husband, is remarkably similar to that of the Supreme Court in *Smith*: "The husband's attitude seems to be that if this case is decided in his favor it will be quite all right, but if it is not so decided he will be out of reach of the court, so that no matter what is done or what decision is made, he will continue to do just as he has done in the past, namely pay no attention whatsoever to any order of any court in California insofar as complying with any such order is concerned." This case is virtually on all fours with *Smith* and *Rude*. Armstrong urges the Court to

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reverse the decision below, but if it does not, he will be out of reach of the court and will continue, as he has in the past, to willfully defy valid court orders.

CONCLUSION

Armstrong's voluntary intermeddling in other litigation against the Church and

numerous other clear violations of the Settlement Agreement led to the preliminary injunction issued by Judge Sohigian. Armstrong defied the preliminary injunction though it was upheld on appeal. Judge Thomas issued a permanent injunction which Armstrong unsuccessfully tried to avoid through filing bankruptcy. He then repeatedly violated the permanent injunction and was held in contempt for doing do. Rather than discharge the contempt, he fled the jurisdiction. He now prosecutes this appeal apparently from Canada and, while still in contempt, travels to Germany to commit further violations of the permanent injunction from which he appeals.

Armstrong's appeal should be dismissed now because he has been held in contempt for his willful defiance of the order and judgment from which he appeals. Determination of this motion to dismiss requires only reference to the Declaration of Andrew H. Wilson, and the accompanying exhibits including the Order of Permanent Injunction, the Order of Contempt, and the Bench Warrant. As the appeal is readily resolved without reference to the merits of the action and simply by review of these few enumerated documents, thereby obviating the need of the Respondent and this Court to

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review and digest the extensive record, it should be granted in the interests of judicial economy.⁵

Dated: November 18, 1997

WILSON CAMPILONGO LLP

RABINOWITZ, BOUDIN,
STANDARD, KRINSKY &
LIEBERMAN, P.C.

By: [signed]
Andrew H. Wilson

Attorneys for Plaintiff/Respondent
CHURCH OF SCIENTOLOGY
INTERNATIONAL

⁵Respondent further requests that its time to respond to Appellant's Opening Brief be stayed pending determination of this Motion to Dismiss Appellant's Appeal. If necessary upon determination of the motion, Respondent further requests an additional stay of thirty days from the date of determination of the motion to file its answering brief.

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**DECLARATION OF ANDREW H. WILSON IN SUPPORT
OF MOTION TO DISMISS APPEAL**

ANDREW H. WILSON deposes and says:

1. I am a partner in the law firm of Wilson Campilongo LLP and am an attorney admitted to practice law in the State of California. I was the attorney principally responsible for the representation of the Plaintiff and Appellant, Church of Scientology International (the "Church or CSI") and was lead counsel for CSI in the litigation of this matter at the superior court level. As such I have personal knowledge of the facts set forth below and, if called upon to testify on such matters, would and could do so competently.

2. In December 1986 the Church entered a settlement (the Settlement Agreement") with Gerald Armstrong. This settlement was part of a settlement of a number of lawsuits, which included litigation between the Church and Armstrong. Armstrong was the "lead" plaintiff, and all plaintiffs were represented by the same attorney. Armstrong was also the principal witness for the other plaintiffs, as a self-proclaimed expert on the workings and management of the Church. In settling this litigation, it was the Church's desire to end its relationship with Armstrong once and for all. In order to accomplish this, the Church insisted on the following covenants by Armstrong: (i) Armstrong's agreement to end his active and voluntary support

to anti-Scientology litigants which he had been voluntarily providing in the form of purported expert declarations and testimony for the preceding several years, (ii)

[page break]

Armstrong's agreement to return to the Church documents which he had stolen and all copies of them and (iii) Armstrong's agreement to refrain from discussing with third parties his experiences with the Scientology religion and to keep confidential all terms of the settlement itself. In exchange., and as his part of the overall settlement, Armstrong received \$800,000.

3. Armstrong, however, quickly betrayed his agreement. In 1990 he conveyed to his friends and attorney virtually all of his assets, including an expensive house which he had built in Marin County with proceeds from his settlement with the Church. Then he resumed voluntary and active litigation support in direct violation of the terms of the Settlement Agreement and began making and publicizing statements of his purported experiences in and knowledge of the Church.

4. CSI filed the action underlying this appeal in Marin County Superior court in February 1992 (where Armstrong resided). The complaint sought injunctive relief to prohibit Armstrong from committing further violations of the Settlement Agreement and also liquidated damages for the violations which Armstrong had already committed. The Church rapidly obtained a Temporary Restraining Order, compelling Armstrong to adhere to the Settlement Agreement but Armstrong was able to delay the motion for preliminary injunction through various procedural maneuvers, including a motion to change venue to Los Angeles County. In May, 1992, after an extensive evidentiary hearing, the Hon. Ronald Sohigian entered a preliminary injunction which prohibited Armstrong from further violations of the key

provisions of the settlement agreement.

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5. In June, 1992 I took Armstrong's deposition in this case. During the deposition, in the face of Armstrong's assertions that he did not consider himself restrained in any way by the contract which he had entered with CSI in 1986, I questioned him as to whether he intended to obey the order of Judge Sohigan.

Armstrong responded:

A. When I mean, I have, I have absolutely no intention of honoring that settlement agreement. I cannot. I cannot logically, I cannot ethically. I cannot morally. I cannot psychically. I cannot philosophically. I cannot spiritually. I cannot in any way. And it is firmly my intention not to honor it.

Q. No matter what a court says?

A. No court could order it. They're going to have to kill me.

A true and correct copy of the relevant pages of that deposition are attached hereto and incorporated herein as Exhibit [A].

6. Armstrong sought review of the preliminary injunction by writ of mandate which was denied on November 20, 1992 and then prosecuted an interlocutory appeal. On May 16, 1994, the Court of Appeal for the Second Appellate District affirmed the issuance of the preliminary injunction by its unpublished opinion of that date, a true and correct copy of which is attached hereto and incorporated herein by reference as Exhibit [B].

7. True to his challenge to the order of the Court and his avowal to disregard his contractual obligations, Armstrong continued to engage in breaches of the terms of settlement and of the preliminary injunction issued by Judge Sohigan. CSI responded by amending its complaint several times in order to incorporate these new breaches. After Armstrong stipulated to a transfer of the action back to Marin

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County where it had originally been brought and where Armstrong had resided throughout the case, the Church then brought and won a series of summary adjudication motions on specific breaches, ultimately being awarded a total of \$300,000 in liquidated damages. CSI filed and won a motion for summary adjudication on its claim for a permanent injunction. Further, on summary adjudication the Church obtained the dismissal of Armstrong's cross-complaint attacking the validity and enforceability of the settlement agreement and also obtained the dismissal of Armstrong's affirmative defenses. Judge Gary H. Thomas entered a detailed, carefully crafted Order of Permanent Injunction of October 17, 1995 and entered Judgment in the breach of contract case on May 2, 1996.

8. In his Order of permanent injunction, Judge Thomas enumerated 31 breaches of the settlement agreement by Armstrong in the period from 1991 to 1995. A true and correct copy of the Order of Permanent Injunction and the subsequent Judgment attached hereto and incorporated herein by reference as Exhibit [C]. After devoting five pages to the itemization of Armstrong's breaches of the agreement -- all of which were carried out in violation of Judge Sohigian's preliminary injunction -- the Court recognized the futility of attempting to bring Armstrong into compliance with his settlement contract through the imposition of a monetary sanction and noted the need for a court order to compel Armstrong's compliance:

Defendant Armstrong has reiterated numerous times that he intends to continue breaching the Agreement unless he is ordered by the Court to cease and desist.

Accordingly, the Court finds that entry of a permanent injunction in this action is necessary in this action

because pecuniary compensation could not afford the

Church adequate relief, and the restraint is necessary in order to prevent a multiplicity of actions for breach of contract.

Exh.C, 6:18-20, 24-27)

9. Armstrong's immediate rinse to the award of \$300,000 in liquidated damages to CSI and to the issuance of the Order of Permanent Injunction was to file for bankruptcy and request that the bankruptcy court discharge this debt and the injunction. CSI brought an adversary complaint in opposition. After a one-day trial, the Hon. Alan Jaroslovsky, of the U.S. Bankruptcy Court, Santa Rosa Division discharged Armstrong's monetary debt but left whole the Order of Permanent Injunction.

10. Unfortunately Armstrong, has chosen to ignore this Order of Permanent Injunction of the Marin County Superior Court, just as he earlier had ignored the Order of Preliminary Injunction of the Los Angeles Superior Court. On October 7, 1996 Armstrong sent a letter to the Los Angeles City Council, which at the time was considering the renaming of a city street in honor of L. Ron Hubbard, the founder of the Scientology religion. Armstrong's letter (which evidently had no impact on the City Council as they ruled virtually unanimously to approve the street name change) was a direct and flagrant breach of both the 1986 settlement agreement and 1995 Order of Permanent Injunction. Armstrong compounded this violation by having his letter posted on the Internet. A true and correct copy of the Internet posting of Armstrong's letter is attached hereto and incorporated herein by reference as Exhibit [D]. In response to this violation, I sent Armstrong a letter warning him

that such actions constituted a violation of Judge Thomas' order and that " further violations of the Order will only serve to exacerbate and compound the seriousness

of this matter." A true and correct copy of my latter of october 23, 1996 to Armstrong is attached hereto and incorporated by reference as Exhibit [E].

11. Unrestrained, Armstrong again violated the Marin Court's Order.

This time, on January 26, 1994, Armstrong submitted a 45 page declaration against the Religious Technology Center ("RTC"), one of the named beneficiaries of the 1986 Settlement Agreement. He sent this declaration, containing material directly violating the agreement and Order, to the Hon. Ronald M. Whyte, of the United States District Court for the Northern District of California, who was presiding over several copyright infringement cases brought by RTC. Armstrong's declaration was rejected by the court as improperly submitted. Nevertheless, since this was a further and egregious violation of the Order of Permanent Injunction, CSI concluded that Armstrong's actions must be brought to the attention of Judge Thomas. Accordingly, CSI moved for an Order to Show Cause why Armstrong should not be held in contempt of court for his actions. Rather than responding to the OSC Armstrong fled the country, moving to Canada where, to the best of my knowledge, he currently resides. Armstrong's flight required that we serve tire Order to Show Cause by publication.

12. Judge Thomas reviewed the evidence and found Armstrong in contempt of court. On July 5, 1997 he issued an Order of Contempt which states, in part:

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ARMSTRONG willfully disobeyed the Order [of Permanent Injunction]. On or about January 26, 1997 ARMSTRONG sent a document entitled DECLARATION OF GERALD ARMSTRONG to the United States District Judge Ronald M. Whyte. Judge Whyte was at the time presiding ever three cases in which the plaintiff is RTC. In the Declaration, ARMSTRONG recites his understanding that he was

prohibited from sending such a Declaration directly to litigants and states that he is instead sending it directly to Judge Whyte in the hopes of influencing his decision on a pending matter. This evidences ARMSTRONG's willful disobedience of the Order and Judgment."

(A true and correct copy of said order is attached hereto and incorporated herein by reference as Exhibit [F]) In finding Armstrong guilty of Contempt of Court, the Marin Court noted that "the Order was valid and enforceable; ARMSTRONG had knowledge of the Order, and had the ability to comply with the Order and willfully disobeyed the Order." (*Id.*)

13. The Court sentenced Armstrong to a \$1,000 fine and 48 hours confinement in the county jail. (*Id.*) Armstrong did not appeal the Order of Contempt and the time for filing a notice of appeal has passed. On August 6, 1997 Judge Thomas issued a Bench Warrant for Armstrong's arrest, a true and correct copy of which is attached hereto as Exhibit [G]. The Warrant is still outstanding and Armstrong has not appeared to satisfy the terms of the Order of Contempt.

14. Further, despite the Order of Permanent Injunction, despite the Order of Contempt, and despite the Bench Warrant, from his refuge in Canada, Armstrong has continued to flagrantly violate the order of the Marin Court and ignore his contractual duties to the Church per his 1986 settlement. On October 28, 1997

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Armstrong appeared on a German television broadcast for which he had given an extensive interview, discussing matters at length which constituted repeated violations of the Order of Permanent Injunction. I have viewed a videotape of this broadcast and have personally observed Armstrong's numerous statements in violation of that Order. The videotape is not made part of the record at this time in order not to burden the court. The videotape and/or a transcript, can be provided promptly if

contractual duties to the Church per his 1986 settlement. On October 28, 1997

Armstrong appeared on a German television broadcast for which he had given an extensive interview, discussing matters at length which constituted repeated violations of the Order of Permanent Injunction. I have viewed a videotape of this broadcast and have personally observed Armstrong's numerous statements in violation of that Order. The videotape is not made part of the record at this time in order not to burden the court. The videotape and/or a transcript, can be provided promptly if

necessary.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed this 18th day of November, 1997

[signed]
ANDREW H. WILSON

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See also: Armstrong Declaration in Support of Opposition to Plaintiff/Respondent's Motion to Dismiss the Appeal

Exhibit [A]
Armstrong Deposition Excerpt[.pdf] 06-24-1992

Exhibit [B]
Unpublished opinion Court of Appeal 05-16-1994

Exhibit [C]
a) Injunction
b) Judgment

Exhibit [D]
Armstrong Letter to Los Angeles City Council 10-7-1996

Exhibit [E]
Wilson Letter to Armstrong 10-23-1996

Exhibit [F]
Order of Contempt 07-05-1997

Exhibit [G]
Bench Warrant 08-06-1997

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**DECLARATION OF ANDREW H. WILSON IN SUPPORT
OF MOTION TO DISMISS APPEAL**

ANDREW H. WILSON deposes and says:

1. I am a partner in the law firm of Wilson Campilongo LLP and am an attorney admitted to practice law in the State of California. I was the attorney principally responsible for the representation of the Plaintiff and Appellant, Church of Scientology International (the "Church or CSI") and was lead counsel for CSI in the litigation of this matter at the superior court level. As such I have personal knowledge of the facts set forth below and, if called upon to testify on such matters, would and could do so competently.

2. In December 1986 the Church entered a settlement (the Settlement Agreement") with Gerald Armstrong. This settlement was part of a settlement of a number of lawsuits, which included litigation between the Church and Armstrong. Armstrong was the "lead" plaintiff, and all plaintiffs were represented by the same attorney. Armstrong was also the principal witness for the other plaintiffs, as a self-proclaimed expert on the workings and management of the Church. In settling this litigation, it was the Church's desire to end its relationship with Armstrong once and for all. In order to accomplish this, the Church insisted on the following covenants by Armstrong: (i) Armstrong's agreement to end his active and voluntary support to anti-Scientology litigants which he had been voluntarily providing in the form of purported expert declarations and testimony for the preceding several years, (ii)

[page break]

Armstrong's agreement to return to the Church documents which he had stolen and all copies of them and (iii) Armstrong's agreement to refrain from discussing with third parties his experiences with the Scientology religion and to keep confidential all terms of the settlement itself. In exchange., and as his part of the overall settlement, Armstrong received \$800,000.

3. Armstrong, however, quickly betrayed his agreement. In 1990 he conveyed to his friends and attorney virtually all of his assets, including an expensive house which he had built in Marin County with proceeds from his settlement with the Church. Then he resumed voluntary and active litigation support in direct violation of the terms of the Settlement Agreement and began making and publicizing statements of his purported experiences in and knowledge of the Church.

4. CSI filed the action underlying this appeal in Marin County Superior court in February 1992 (where Armstrong resided). The complaint sought injunctive relief to prohibit Armstrong from committing further violations of the Settlement Agreement and also liquidated damages for the violations which Armstrong had already committed. The Church rapidly obtained a Temporary Restraining Order, compelling Armstrong to adhere to the Settlement Agreement but Armstrong was able to delay the motion for preliminary injunction through various procedural maneuvers, including a motion to change venue to Los Angeles County. In May, 1992, after an extensive evidentiary hearing, the Hon. Ronald Sohigian entered a preliminary injunction which prohibited Armstrong from further violations of the key provisions of the settlement agreement.

5. In June, 1992 I took Armstrong's deposition in this case. During the

deposition, in the face of Armstrong's assertions that he did not consider himself restrained in any way by the contract which he had entered with CSI in 1986, I questioned him as to whether he intended to obey the order of Judge Sohigan.

Armstrong responded:

A. When I mean, I have, I have absolutely no intention of honoring that settlement agreement. I cannot. I cannot logically, I cannot ethically. I cannot morally. I cannot psychically. I cannot philosophically. I cannot spiritually. I cannot in any way. And it is firmly my intention not to honor it.

Q. No matter what a court says?

A. No court could order it. They're going to have to kill me.

A true and correct copy of the relevant pages of that deposition are attached hereto and incorporated herein as Exhibit [A].

6. Armstrong sought review of the preliminary injunction by writ of mandate which was denied on November 20, 1992 and then prosecuted an interlocutory appeal. On May 16, 1994, the Court of Appeal for the Second Appellate District affirmed the issuance of the preliminary injunction by its unpublished opinion of that date, a true and correct copy of which is attached hereto and incorporated herein by reference as Exhibit [B].

7. True to his challenge to the order of the Court and his avowal to disregard his contractual obligations, Armstrong continued to engage in breaches of the terms of settlement and of the preliminary injunction issued by Judge Sohigan. CSI responded by amending its complaint several times in order to incorporate these new breaches. After Armstrong stipulated to a transfer of the action back to Marin

County where it had originally been brought and where Armstrong had resided throughout the case, the Church then brought and won a series of summary adjudication motions on specific breaches, ultimately being awarded a total of

\$300,000 in liquidated damages. CSI filed and won a motion for summary adjudication on its claim for a permanent injunction. Further, on summary adjudication the Church obtained the dismissal of Armstrong's cross-complaint attacking the validity and enforceability of the settlement agreement and also obtained the dismissal of Armstrong's affirmative defenses. Judge Gary H. Thomas entered a detailed, carefully crafted Order of Permanent Injunction of October 17, 1995 and entered Judgment in the breach of contract case on May 2, 1996.

8. In his Order of permanent injunction, Judge Thomas enumerated 31 breaches of the settlement agreement by Armstrong in the period from 1991 to 1995. A true and correct copy of the Order of Permanent Injunction and the subsequent Judgment attached hereto and incorporated herein by reference as Exhibit [C]. After devoting five pages to the itemization of Armstrong's breaches of the agreement -- all of which were carried out in violation of Judge Sohigian's preliminary injunction -- the Court recognized the futility of attempting to bring Armstrong into compliance with his settlement contract through the imposition of a monetary sanction and noted the need for a court order to compel Armstrong's compliance:

Defendant Armstrong has reiterated numerous times that he intends to continue breaching the Agreement unless he is ordered by the Court to cease and desist.

Accordingly, the Court finds that entry of a permanent injunction in this action is necessary in this action

4

because pecuniary compensation could not afford the Church adequate relief, and the restraint is necessary in order to prevent a multiplicity of actions for breach of contract.

Exh. C, 6:18-20, 24-27)

9. Armstrong's immediate response to the award of \$300,000 in

liquidated damages to CSI and to the issuance of the Order of Permanent Injunction was to file for bankruptcy and request that the bankruptcy court discharge this debt and the injunction. CSI brought an adversary complaint in opposition. After a one-day trial, the Hon. Alan Jaroslovsky, of the U.S. Bankruptcy Court, Santa Rosa Division discharged Armstrong's monetary debt but left whole the Order of Permanent Injunction.

10. Unfortunately Armstrong, has chosen to ignore this Order of Permanent Injunction of the Marin County Superior Court, just as he earlier had ignored the Order of Preliminary Injunction of the Los Angeles Superior Court. On October 7, 1996 Armstrong sent a letter to the Los Angeles City Council, which at the time was considering the renaming of a city street in honor of L. Ron Hubbard, the founder of the Scientology religion. Armstrong's letter (which evidently had no impact on the City Council as they ruled virtually unanimously to approve the street name change) was a direct and flagrant breach of both the 1986 settlement agreement and 1995 Order of Permanent Injunction. Armstrong compounded this violation by having his letter posted on the Internet. A true and correct copy of the Internet posting of Armstrong's letter is attached hereto and incorporated herein by reference as Exhibit [D]. In response to this violation, I sent Armstrong a letter warning him

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that such actions constituted a violation of Judge Thomas' order and that " further violations of the Order will only serve to exacerbate and compound the seriousness of this matter." A true and correct copy of my latter of october 23, 1996 to Armstrong is attached hereto and incorporated by reference as Exhibit [E].

11. Unrestrained, Armstrong again violated the Marin Court's Order. This time, on January 26, 1994, Armstrong submitted a 45 page declaration against

the Religious Technology Center ("RTC"), one of the named beneficiaries of the 1986 Settlement Agreement. He sent this declaration, containing material directly violating the agreement and Order, to the Hon. Ronald M. Whyte, of the United States District Court for the Northern District of California, who was presiding over several copyright infringement cases brought by RTC. Armstrong's declaration was rejected by the court as improperly submitted. Nevertheless, since this was a further and egregious violation of the Order of Permanent Injunction, CSI concluded that Armstrong's actions must be brought to the attention of Judge Thomas. Accordingly, CSI moved for an Order to Show Cause why Armstrong should not be held in contempt of court for his actions. Rather than responding to the OSC Armstrong fled the country, moving to Canada where, to the best of my knowledge, he currently resides. Armstrong's flight required that we serve tire Order to Show Cause by publication.

12. Judge Thomas reviewed the evidence and found Armstrong in contempt of court. On July 5, 1997 he issued an Order of Contempt which states, in part:

6

ARMSTRONG willfully disobeyed the Order [of Permanent Injunction]. On or about January 26, 1997 ARMSTRONG sent a document entitled DECLARATION OF GERALD ARMSTRONG to the United States District Judge Ronald M. Whyte. Judge Whyte was at the time presiding ever three cases in which the plaintiff is RTC. In the Declaration, ARMSTRONG recites his understanding that he was prohibited from sending such a Declaration directly to litigants and states that he is instead sending it directly to Judge Whyte in the hopes of influencing his decision on a pending matter. This evidences ARMSTRONG's willful disobedience of the Order and Judgment."

(A true and correct copy of said order is attached hereto and incorporated herein by reference as Exhibit [F]) In finding Armstrong guilty of Contempt of Court, the

Marin Court noted that "the Order was valid and enforceable; ARMSTRONG had knowledge of the Order, and had the ability to comply with the Order and willfully disobeyed the Order." (*Id.*)

13. The Court sentenced Armstrong to a \$1,000 fine and 48 hours confinement in the county jail. (*Id.*) Armstrong did not appeal the Order of Contempt and the time for filing a notice of appeal has passed. On August 6, 1997 Judge Thomas issued a Bench Warrant for Armstrong's arrest, a true and correct copy of which is attached hereto as Exhibit [G]. The Warrant is still outstanding and Armstrong has not appeared to satisfy the terms of the Order of Contempt.

14. Further, despite the Order of Permanent Injunction, despite the Order of Contempt, and despite the Bench Warrant, from his refuge in Canada, Armstrong has continued to flagrantly violate the order of the Marin Court and ignore his contractual duties to the Church per his 1986 settlement. On October 28, 1997

7

Armstrong appeared on a German television broadcast for which he had given an extensive interview, discussing matters at length which constituted repeated violations of the Order of Permanent Injunction. I have viewed a videotape of this broadcast and have personally observed Armstrong's numerous statements in violation of that Order. The videotape is not made part of the record at this time in order not to burden the court. The videotape and/or a transcript, can be provided promptly if necessary.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed this 18th day of November, 1997

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 Telephone: (415) 391-3900
 4 Attorneys for Plaintiff
 5 CHURCH OF SCIENTOLOGY INTERNATIONAL

6
 7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF MARIN**

9 CHURCH OF SCIENTOLOGY	)	Case No. 152229
INTERNATIONAL, a California	)	
10 not-for-profit religious corporation;	)	BENCH WARRANT
	)	(Civil)
11 Plaintiff,	)	
	)	
12 vs.	)	
	)	
13 GERALD ARMSTRONG; DOES 1 through 25,	)	
inclusive,	)	
	)	
14 Defendants.	)	
	)	

15
 16
 17
 18 The People of the State of California to any peace officer of
 19 this state:

20 On October 17, 1995 this Court entered an Order of Permanent
 21 Injunction against Defendant GERALD ARMSTRONG ("ARMSTRONG"). The
 22 Order prohibits ARMSTRONG from voluntarily assisting any persons
 23 litigating claims adverse to the "Beneficiaries" and prohibiting
 24 "works" discussing any of the Beneficiaries. The Order was valid.

25 ARMSTRONG had knowledge of the Order. ARMSTRONG has the ability to
26 comply with the Order.

27 ARMSTRONG willfully disobeyed the Order by sending a
28 declaration to Judge Whyte.

The Contempt proceedings against ARMSTRONG came on for hearing
by the above-referenced Court on May 23, 1997 pursuant to this

1 Court's ORDER TO SHOW CAUSE RE CONTEMPT issued on February 18, 1997,
2 and pursuant to this Court's ORDER ALLOWING SERVICE OF THE ORDER TO
3 SHOW CAUSE RE CONTEMPT issued on March 5, 1997. ARMSTRONG did not
4 appear nor did ARMSTRONG file any opposition or evidence. An ORDER
5 OF CONTEMPT was issued by this Court on June 5, 1997 (A true and
6 correct copy of this order is attached and highlighted here as
7 Exhibit A.

8 YOU ARE THEREFORE ORDERED forthwith to arrest GERALD ARMSTRONG
9 whose last known address: 715 Sir Francis Drake Boulevard, San
10 Anselmo, CA 94960-1949 and bring him before this Court to show
11 Cause why he should not be punished for contempt for disobeying the
12 mandate of this Court.

13 Arrest under this bench warrant may be made at any time of the
14 day or night.

15 Bail is fixed in the sum of \$5,000 (and pursuant to the
16 ORDER OF CONTEMPT, including a fine of \$1000.00 and confinement in
17 the County Jail for a period not to exceed 48 hours).

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4 Attorneys for Plaintiff
 5 CHURCH OF SCIENTOLOGY INTERNATIONAL

RECEIVED

APR 07 2004

Ford Greene's
Hub Law Office

6
 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF MARIN

9 CHURCH OF SCIENTOLOGY	)	Case No. 152229
INTERNATIONAL, a California	)	
10 not-for-profit religious corporation;	)	BENCH WARRANT
	)	(Civil)
11 Plaintiff,	)	
	)	
12 vs.	)	
	)	
13 GERALD ARMSTRONG; DOES 1 through 25,	)	
inclusive,	)	
	)	
14 Defendants.	)	
	)	

15
 16
 17
 18 The People of the State of California to any peace officer of
 19 this state:

20 On October 17, 1995 this Court entered an Order of Permanent
 21 Injunction against Defendant GERALD ARMSTRONG ("ARMSTRONG"). The
 22 Order prohibits ARMSTRONG from voluntarily assisting any persons
 23 litigating claims adverse to the "Beneficiaries" and prohibiting
 24 "works" discussing any of the Beneficiaries. The Order was valid.

25 ARMSTRONG had knowledge of the Order. ARMSTRONG has the ability to
26 comply with the Order.

27 ARMSTRONG willfully disobeyed the Order by sending a
28 declaration to Judge Whyte.

The Contempt proceedings against ARMSTRONG came on for hearing
by the above-referenced Court on May 23, 1997 pursuant to this

1 Court's ORDER TO SHOW CAUSE RE CONTEMPT issued on February 18, 1997,
2 and pursuant to this Court's ORDER ALLOWING SERVICE OF THE ORDER TO
3 SHOW CAUSE RE CONTEMPT issued on March 5, 1997. ARMSTRONG did not
4 appear nor did ARMSTRONG file any opposition or evidence. An ORDER
5 OF CONTEMPT was issued by this Court on June 5, 1997 (A true and
6 correct copy of this order is attached and highlighted here as
7 Exhibit A.

8 YOU ARE THEREFORE ORDERED forthwith to arrest GERALD ARMSTRONG
9 whose last known address: 715 Sir Francis Drake Boulevard, San
10 Anselmo, CA 94960-1949 and bring him before this Court to show
11 Cause why he should not be punished for contempt for disobeying the
12 mandate of this Court.

13 Arrest under this bench warrant may be made at any time of the
14 day or night.

15 Bail is fixed in the sum of \$5,000 (and pursuant to the
16 ORDER OF CONTEMPT, including a fine of \$1000.00 and confinement in
17 the County Jail for a period not to exceed 48 hours).

18 IT IS SO ORDERED.

19

Date: August 6, 1997

20

[signed] Gary W. Thomas
JUDGE OF THE SUPERIOR COURT

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 7
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF MARIN**
 10

11 CHURCH OF SCIENTOLOGY	)	CASE NO. 152229
INTERNATIONAL, a California	)	
12 not-for-profit religious corporation;	)	BENCH WARRANT
	)	(CIVIL)
13 Plaintiff,	)	
	)	
14 vs.	)	
	)	
15 GERALD ARMSTRONG; DOES 1 through 25,	)	
inclusive,	)	
	)	
16 Defendants.	)	
	)	
17 _____	)	

18
 19
 20
 21 The People of the State of California to any peace officer of this state:

22 On October 17, 1995 this Court entered an Order of Permanent Injunction against
 23 Defendant GERALD ARMSTRONG ("ARMSTRONG"). The Order prohibits ARMSTRONG
 24 from voluntarily assisting any persons litigating claims adverse to the "Beneficiaries" and

25 prohibiting "works" discussing any of the Beneficiaries. The Order was valid. ARMSTRONG
26 had knowledge of the Order. ARMSTRONG has the ability to comply with the Order.
27 ARMSTRONG willfully disobeyed the Order on thirteen (13) separate occasions between
28 September 2, 1997 and November 26, 1997, which were brought to the attention of this court on
December 2, 1997 which on that date issued an Order to Show Cause re Contempt for those

1

1 violations. Said OSC re Contempt was heard by the Hon Gary W. Thomas on January 30, 1998
2 and, on February 11, 1998 Judge Thomas signed the SECOND ORDER OF CONTEMPT, a true
3 and correct copy of which is attached hereto and incorporated herein by reference as Exhibit A.

4 YOU ARE THEREFORE ORDERED forthwith to arrest GERALD ARMSTRONG
5 whose last known address: 715 Sir Francis Drake Boulevard, San Anselmo, CA 94960- 1949 and
6 bring him before this Court to show cause why he should not be punished for contempt for
7 disobeying the mandate of this Court.

8 Arrest under this bench warrant may be made at any time of the day or night.

9 Bail is fixed in the sum of \$ 10,000 (and pursuant to the ORDER OF CONTEMPT,
10 including a fine of \$2600.00 and confinement in the County Jail for a period not to exceed 26
11 days).

12 **IT IS SO ORDERED.**

13 Date: 5/15/98

[signed] Vernon F. Smith
JUDGE OF THE SUPERIOR COURT

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9 CHURCH OF SCIENTOLOGY) Case No. 152229
INTERNATIONAL, a California)
10 not-for-profit religious corporation;) **ORDER OF CONTEMPT**
)
11 Plaintiff,)
)
12 vs.)
)
13 GERALD ARMSTRONG,)
)
)
14 Defendant.)
)
15 _____)

GOOD CAUSE APPEARING THEREFOR, the Court makes the following

25 findings:

26 1. On October 17, 1995 this Court entered an Order of
27 Permanent Injunction against ARMSTRONG (the "Order") following
28 motions for summary adjudication brought by Plaintiff. This

-1-

1 Order was later incorporated into a judgment entered against Mr.
2 Armstrong on May 2, 1996 (the "Judgment"). The order prohibits
3 ARMSTRONG from voluntarily assisting any persons litigating
4 claims adverse to the "Beneficiaries" and from creating or
5 publishing "works" discussing any of the Beneficiaries. One of
6 the Beneficiaries is a corporation known as Religious Technology
7 Center ("RTC").

8 2. The Order was valid when rendered and remains fully
9 enforceable, notwithstanding ARMSTRONG's appeal of the Judgment.
10 The filing of a Notice of Appeal does not render a valid order
11 unenforceable.

12 3. ARMSTRONG had knowledge of the Order. ARMSTRONG's
13 counsel appeared at the hearing pertaining to the Order and
14 received Notice of Entry. ARMSTRONG also received a Notice of
15 Entry of order which was served on his counsel. ARMSTRONG's
16 actual knowledge of the Order is also shown by the fact that
17 ARMSTRONG himself signed and filed a Notice of Appeal of the
18 Judgment.

19 4. ARMSTRONG had the ability to comply with the Order. The

20 order was specific. It prohibited ARMSTRONG from voluntarily
21 assisting any person arbitrating or litigating adversely to the
22 Beneficiaries and also prohibited ARMSTRONG from facilitating in
23 any manner the creation, publication, broadcast, writing,
24 electronic recording or reproduction of various documentary
25 works. There has been no suggestion, and certainly no showing by
26 ARMSTRONG, that he is incapable of complying with the order.
27 ///

28 ORDER OF CONTEMPT

-2-

1 5. ARMSTRONG willfully disobeyed the order. On or about
2 January 26, 1997, ARMSTRONG sent a document entitled DECLARATION
3 OF GERALD ARMSTRONG to United States District Judge Ronald M.
4 Whyte. Judge Whyte was at the time presiding over three cases in
5 which the plaintiff is RTC. In the Declaration, ARMSTRONG
6 recites his understanding that he was prohibited from sending
7 such a Declaration directly to litigants and states that he is
8 instead sending it directly to Judge Whyte in the hopes of
9 influencing his decision on a pending matter. This evidences
10 ARMSTRONG's willful disobedience of the Order and Judgment.

11 IT IS HEREBY ADJUDGED, ORDERED AND DECREED that Defendant
12 GERALD ARMSTRONG is guilty of Contempt of Court for a failure to
13 obey the Order and Judgment by sending the Declaration, as
14 described above, to Judge White. As set forth above, the Order

15 was valid and enforceable; ARMSTRONG had knowledge of the Order,
16 had the ability to comply with the order and willfully disobeyed
17 the Order.

18 IT IS FURTHER ADJUDGED ORDERED AND DECREED that Defendant
19 GERALD ARMSTRONG is to be punished for the foregoing contempt
20 by a fine of \$1,000.00 and confinement in the County Jail for a
21 period not to exceed 48 hours.

22

23

Dated: JUN 03 1997

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[stamped] GARY W. THOMAS
JUDGE OF THE SUPERIOR COURT

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28 ORDER OF CONTEMPT

-3-

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[CT 9786]

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 10 Telefax: (213) 953-3351

8 Attorneys for Plaintiff
 9 CHURCH OF SCIENTOLOGY
 10 INTERNATIONAL

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF MARIN**

13 CHURCH OF SCIENTOLOGY)
 14 INTERNATIONAL, a California not-for-profit)
 15 religious corporation,)

16 Plaintiff,)

17 vs.)

18 GERALD ARMSTRONG; DOES 1 through)
 19 25, Inclusive,)

20 Defendants.)
 21)
 22)
 23)

CASE NO. BC 157680
 [initialed] GWT 10/17/95

**ORDER OF PERMANENT
 INJUNCTION**

DATE: October 6, 1995
 TIME: 9:00 a.m.
 DEPT: 1

TRIAL DATE: Vacated

[Stamp]

FILED

Oct 17 1995
 HOWARD HANSON
 MARIN COUNTY CLERK
 by J. Steele, Deputy

24 This matter came on for hearing on October 6, 1995, on motion of plaintiff
25 Church of Scientology international ("the Church") for Summary Adjudication of
26 the Twentieth Cause of Action of the Second Amended Complaint. Plaintiff
27 Church of Scientology International appeared by its attorneys, Andrew H. Wilson
28 of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowies & Moxon,

1

[CT 9787]

1 defendant Armstrong appeared by his attorney, Ford Greene. Having read and
2 considered the moving and opposing papers, and the evidence and arguments
3 presented therein and at the hearing, and good cause appearing:

4 IT IS ORDERED:

5 The Church's motion for summary adjudication of the twentieth cause of
6 action of the Second Amended Complaint is GRANTED. The Court finds that there
7 is no triable issue of material fact as to any of the following:

8 1. Plaintiff and defendant freely and voluntarily entered into a Mutual
9 Release of All Claims and Settlement Agreement ("Agreement") in December,
10 1986.

11 2. Plaintiff performed all of its obligations pursuant to the Agreement.

12 3. Defendant Armstrong received substantial consideration for the
13 promises which he made in the Agreement.

14 4. Since 1990, defendant Armstrong has repeatedly breached
15 paragraphs 7(D), 7(E), 7(H), 7(G), 10, 18(D) and 20 of the Agreement.

16 5. Between 1991 and the present, Armstrong breached paragraphs 7(G),
17 7(H) and 10 of the Agreement by providing voluntary assistance, exclusive of

18 testimony made pursuant to a valid subpoena, to the following private individuals,
19 each of whom was pressing a claim or engaged in litigation with plaintiff and/or
20 one or more of the designated beneficiaries of the Agreement:

21 * Vicki and Richard Aznaran, anti-Scientology litigants in the case of
22 Vicki Aznaran, et al. v. Church of Scientology International, United States
23 District Court for the Central District of California, Case No. CV 88-1786
24 (JMI) [Sep.St.Nos. 11-16];

25 * Joseph A. Yanny, anti-Scientology litigant in the case of Religious
26 Technology Center, et al. v. Joseph Yanny, et al., Los Angeles Superior
27 Court No. C 690211 and Religious Technology Center, et al. v. Joseph
28 Yanny et al., Los Angeles Superior Court No. BC 033035 [Sep.St.Nos. 17-

2

[CT 9788]

1 20];

2 * Malcolm Nothling, anti-Scientology litigant in the matter between
3 Malcolm Nothling and the Church of Scientology in South Africa, Adi Codd,
4 Diane Kemp, Glen Rollins; Supreme Court of South Africa (Witwatzbsrand
5 Local Division) Case No. 19221/88. [Sep.St.Nos. 21-241;

6 * Reader's Digest Corporation, anti-Scientology litigant in the case of Church of
7 Scientology of Lausanne vs. Kiosk AG, Basel, Switzerland
8 [Sep.St.Nos. 25-26];

9 * Richard Behar, anti-Scientology litigant in the case of Church of
10 Scientology International v Time Warner, Inc.; Time Inc. Magazine Company
11 and Richard Behar, United States District Court, Southern District of New

York, Case No. 92 Civ, 3024 PKL [Sep.St.Nos. 27-28];

* Steven Hunziker, anti-Scientology litigant in the case of Hunziker v. Applied Materials, Inc., Santa Clara Superior Court Case No. 692629 [Sep.St.Nos. 29-33];

* David Mayo, anti-Scientology litigant in the case of Religious Technology Center v. Robin Scott, et al., United States District Court for the Central District of California, Case No, 85-711 [Sep.St.Nos. 34-35];

* Cult Awareness Network, anti-Scientology litigant in the case of Cult Awareness Network v. Church of Scientology International, et al., Circuit Court of Cook County, Illinois, No. 94L804 [Sep.St.Nos. 38-39];

* Lawrence Wollersheim, anti-Scientology litigant in the cases of Lawrence Wollersheim v. Church of Scientology of California, Los Angeles Superior Court Number C332027 and Church of Scientology of California v. Lawrence Wollersheim, Los Angeles Superior Court Number BC074815 [Sep.St.Nos. 40-42];

* Ronald Lawley, anti-Scientology litigant in the cases of Religious Technology Center, et al. vs. Robin Scott, et al., U.S. District Court, Central

[CT 9889]

District of California, Case No. 85-711 MRP(Bx); Matter Between Church of Scientology Advanced Organization Saint Hill Europe and Africa, and Robin Scott, Ron Lawley, Morag Bellmaine, Stephen Bisbey in the High Court of Justice Queen's Bench Division, Case 1984 S No. 1675; and Matter Between Church of Scientology Religious Education College, Inc., and Nancy

6 Carter, Ron Lawley, Steven Bisbey, in the High Court of Justice Queen's
7 Bench Division, Case 1986 C No. 12230 [Sep.St.Nos. 43-44];

8 * Uwe Geertz and Steven Fishman, anti-Scientology litigants in the case
9 of Church of Scientology International v. Steven Fishman, et al., United
10 States District Court for the Central District of California Number 91-6426
11 HLH(Tx) [Sep.St.Nos. 45-46];

12 * Tilly Good, a claimant against the Church of Scientology, Mission of
13 Sacramento Valley [Sep.St.Nos. 36-37];

14 * Denise Cantin, a claimant against the Church of Scientology of Orange
15 County; Church of Scientology of Boston; and Church of Scientology, Flag
16 Service Organization [Sep.St.Nos. 36-37]; and

17 * Ed Roberts, a claimant against the Church of Scientology of
18 Stevens Creek [Sep.St.Nos. 36-37].

19 6. Between 1992 and the present, Armstrong breached paragraph 7(D)
20 of the Agreement by contacting media representatives, granting interviews and
21 attempting to assist media representatives in the preparation for publication or
22 broadcast magazine articles, newspaper articles, books, radio and television
23 programs, about or concerning the Church and/or other persons and entities
24 referred to in paragraph 1 of the Agreement. These media representatives
25 included:

26 * Cable Network News: reporter Don Knapp, in March, 1992
27 [Sep.St.Nos. 47-48];

28 * American Lawyer Magazine: reporter Bill Horne, In March, 1992

[CT 9790]

1 [Sep.St.No. 49];

2 * Los Angeles Times: reporter Bob Welkos, in May, 1992; and reporter
3 Joel Sappell, in June, 1993 [Sep.St.Nos. 50-51];

4 * CAN Video Interview, with anti- Scientologists " Spanky" Taylor and
5 Jerry Whitfield, in November, 1992 [Sep.St.No. 52];

6 * KFAX Radio: interview planned but prevented in April, 1993
7 [Sep.St.No. 53];

8 * Newsweek Magazine: reporter Charles Fleming, In June, 1993 and
9 August, 1993 [Sep.St.No.54-56];

10 * Daily Journal: reporter Mike Tipping, in June, 1993 [Sep.St.No. 57];

11 * Time Magazine: reporter Richard Behar, in March, 1992 and in June,
12 1993 [Sep.St.Nos. 58-59];

13 * San Francisco Recorder: reporter Jennifer Cohen, in August, 1993
14 [Sep.St.No. 60];

15 * E! Entertainment Network: reporter Greg Agnew, in August, 1993
16 [Sep.St.No. 61];

17 * WORD Radio: Pittsburgh, Pennsylvania, interviewed in the fall of 1993
18 [Sep.St.No. 62];

19 * St. Petersburg Times: St. Petersburg, Florida, reporter Wayne Garcia,
20 in the fall of 1993 [Sep.St.No. 63];

21 * Premiere Magazine: letter to the editor, in October, 1993 [Sep.St.No.
22 64]

23 * Mirror-Group Newspapers: United Kingdom, in May, 1994
24 [Sep.St.No. 65];

25 * Gauntlet Magazine: New York, New York, reporter Rick Cusick in

26 une, 1994 [Sep.St.No. 66];
27 * Pacific Sun Newspaper: reporter Rick Sine, in June and July, 1994
28 [Sep.St.No. 67];

5

[CT 9791]

1 * Disney Cable: reporter Marsha Nix, in August, 1994 [Sep.St.No. 68];
2 and
3 * Tom Voltz: Swiss author writing a book about Scientology, in
4 October, 1994 [Sep.St.No. 69].

5 7. Between 1992 and the present, Armstrong breached paragraph 7(D)
6 of the Agreement by preparing and distributing at least three manuscripts
7 concerning his claimed experiences in and with Scientology, including a treatment
8 for a screenplay which he intends to turn into a film [Sep.St.Nos. 70-71].

9 8. Between 1991 and the present, Armstrong further breached
10 paragraph 7(D) of the Agreement by disclosing his claimed experiences in or with
11 Scientology to each of the following persons or groups, not previously identified:
12 Robert Lobsinger [Sep.St.No. 72]; the New York Times [Sep.St.No. 73]; Toby
13 Plevin, Stuart Culter, Anthony Laing, Kent Burtner and Margaret Singer
14 [Sep.St.No. 74]; Priscilla Coates [Sep.St.No. 75]; Omar Garrison [Sep.St.No. 76];
15 Vaughn and Stacy Young [Sep.St.No. 77]; a Stanford University psychology class
16 [Sep.St.No. 78]; attendees at the 1992 Cult Awareness Network Convention
17 [Sep.St.No. 79]; and Hana Whitfield [Sep.St.No. 80].

18 9. Defendant Armstrong has reiterated numerous times that he intends
19 to continuing breaching the Agreement unless he is ordered by the Court to cease

20 and desist [Sep.St.Nos. 87-97].

21 10. Plaintiff's legal remedies are inadequate insofar as the scope of the
22 relief ordered below is concerned. Tamarind Lithography Workshop, Inc. v. Sanders
23 (1983) 143 Cal.App.3d 571, 577-578, 193 Cal.Rptr. 409, 413.

24 Accordingly, the Court finds that entry of a permanent injunction in this
25 action is necessary in this action because pecuniary compensation could not afford
26 the Church adequate relief, and the restraint is necessary in order to prevent a
27 multiplicity of actions for breach of contract. Civil Code § 3422(1),(3). A ORDER
28 of injunction is therefore entered as follows:

6

[CT 9792]

1 Defendant Gerald Armstrong, his agents, employees, and persons acting in
2 concert or conspiracy with him are restrained and enjoined from doing directly or
3 indirectly any of the following:

4 1. Voluntarily assisting any person (not a governmental organ or
5 entity) intending to make, intending to press, intending to arbitrate, or
6 intending to litigate a claim, regarding such claim or regarding pressing,
7 arbitrating, or litigating it, against any of the following persons or entities:

8 The Church of Scientology International, its officers, directors, agents,
9 representatives, employees, volunteers, successors, assigns and legal
10 counsel;

11 * The Church of Scientology of California, its officers, directors, agents,
12 representatives, employees, volunteers, successors, assigns and legal
13 counsel;

- 14 * Religious Technology Center, its officers, directors, agents,
15 representatives, employees, volunteers, successors, assigns and legal
16 counsel;
17 * The Church of Spiritual Technology, its officers, directors, agents,
18 representatives, employees, volunteers, successors, assigns and legal
19 counsel;
20 * All Scientology and Scientology affiliated Churches, organizations and
21 entities, and their officers, directors, agents, representatives,
22 employees, volunteers, successors, assigns send legal counsel;
23 * Author Services, Inc., its officers, directors, agents, representatives,
24 employees, volunteers, successors, assigns and legal counsel;
25 * The Estate of L. Ron Hubbard, its executor, beneficiaries, heirs,
26 representatives, and legal counsel; and/or
27 * Mary Sue Hubbard;
28 (Hereinafter referred to collectively as "the Beneficiaries");

[CT 9793]

- 1 2. Voluntarily assisting any person (not a governmental organ or
2 entity) defending a claim, intending to defend a claim, intending to defend an
3 arbitration, or intending to defend any claim being pressed, made, arbitrated
4 or litigated by any of the Beneficiaries, regarding such claim or regarding
5 defending, arbitrating, or litigating against it;
6 3. Voluntarily assisting any person (not a governmental organ or
7 entity) arbitrating or litigating adversely to any of the Beneficiaries;

8 4. Facilitating in any manner the creation, publication, broadcast,
9 writing, filming audio recording, video recording, electronic recording or
10 reproduction of any kind of any book, article, film, television program, radio
11 program, treatment, declaration, screenplay or other literary, artistic or
12 documentary work of any kind which discusses, refers to or mentions
13 Scientology, the Church, and/or any of the Beneficiaries;

14 5. Discussing with anyone, not a member of Armstrong's
15 immediate family or his attorney, Scientology, the Church, and/or any of the
16 Beneficiaries;

17 In addition, it is ORDERED that, within 20 days of the issuance of this Order,
18 Armstrong shall:

19 1. Return to the Church any documents which he now has in his
20 possession, custody or control which discuss or concern Scientology, the
21 Church and/or any person or entity referred to in paragraph 1 of the "Mutual
22 Release of All Claims and Settlement Agreement" of December, 1986, other
23 than documents which have been filed in this litigation.

24 It is further ORDERED that during the pendency of this litigation, documents
25 which have been filed in this litigation may be retained by Armstrong's counsel.
26 Those documents are to remain sealed, in the possession of Mr. Greene or any
27 successor counsel, and may not be distributed to third parties. At the conclusion
28 of the instant litigation, it is ORDERED that all documents from this case in

1 counsel's possession which do not comprise counsel's work product will be

delivered to counsel for plaintiff. Counsel's work product may be retained by
Armstrong's counsel.

DATED: [stamp] OCT 17, 1995

[Stamp] GARY W. THOMAS
THE HONORABLE GARY W. THOMAS
SUPERIOR COURT JUDGE

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[CT 8252]

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SEP 18 1995
HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy
[signed]

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF MARIN**
9

10
11 CHURCH OF SCIENTOLOGY INTERNATIONAL,) No. 157 680
12 a California not-for-profit religious corporation,)
13 Plaintiff,) DEFENDANT'S OPPOSITION TO
14 vs.) MOTION FOR SUMMARY
15 GERALD ARMSTRONG; MICHAEL WALTON;) ADJUDICATION ON THE TWENTIETH
16 THE GERALD ARMSTRONG CORPORATION,) CAUSE OF ACTION
17 a California for-profit)
corporation; DOES 1 through 100,)
inclusive,)
18 Defendants.) Date: September 29, 1995
Time: 9:00 a.m.
Dept: One (1)
Trial Date: None Set
19
20
21
22
23

[CT 8253]

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[CT 8254]

I. INTRODUCTION

While the religious beliefs of Gerald Armstrong may seem ludicrous and incredible to some, his right to maintain those beliefs is the subject of one of the Constitution's most dear protections, freedom of religion. At first blush it is difficult to overcome the inferences which arise from the fact that Armstrong received \$800,000 from Scientology to keep his mouth shut, but that is not what Scientology paid him to do. It paid him to dismiss his cross-complaint and mutually agreed to maintain confidentiality as to him in consideration for his reciprocal promise. When Scientology breached this promise, Armstrong was free to speak about it.

Armstrong asks the Court to not continue to be misled by Scientology's long list of Armstrong's actions which it claims to violate the agreement. Indeed, such would have violated the agreement had Scientology not induced Armstrong to enter it based on the fraudulent representations that it wanted a

chance to forsake its practice of fair game, both as to the world in general and Armstrong in particular. Of course, continuing to engage in such conduct invalidates the agreement Scientology would have this Court enforce. After all, why would the man - whose defense caused a Los Angeles County Superior Court judge to find that L. Ron Hubbard was a "pathological liar" and the Scientology Organization to be "schizophrenic" and both to systematically violate the civil rights of members - agree that Scientology could slander him for life - Would such a man sell his reputation for \$800,000 - No, he would not sell his reputation for any amount of dollars.

Armstrong also asks the court to listen to and consider his facts regarding Scientology's conduct leading up to and after the agreement's execution. If the Court does so, and provides a fair hearing to Mr. Armstrong, it will have no choice but to deny summary judgment.

II. STATEMENT OF FACTS

A. Fair Game Activities Against Armstrong Before December 6 1986

Prior to the execution of the settlement agreement in later 1986, Gerald Armstrong had been the subject of the unrelenting application of Scientology's fair game policy. (Sep.St. Defendant's Evidence ¶ 1, A.) Such fair game actions included publishing "Suppressive Person Declares" on him, assaulting him, spying on him, filing false charges with the Los Angeles County District Attorney and with the Federal Bureau of Investigation, efforts to entrap him, illegal surveillance and videotaping, battery with a car

-1-

[CT 8255]

driven by a hired agent, attempting to involve Armstrong in a freeway accident, filing false declarations, international publications falsely accusing him of crime (so-called "black propaganda"), filing false contempt of court charges, and disseminating confidential statements by Armstrong in pastoral counseling sessions. (*Ibid.*)

B. Fair Game Activities Against Armstrong's Attorney Before December 6, 1986

6 Prior to the execution of the settlement agreement in later 1986, Armstrong's lawyer, Michael
7 Flynn had been the subject of the unrelenting application of Scientology's fair game policy. (Sep.St.
8 Defendant's Evidence ¶ 1, B.) Such fair game actions included infiltrating Flynn's office, paying known
9 criminals to testify falsely against him, suing him, framing him with a forgery of a \$2,000,000 check, and
10 subjecting him to an international "black propaganda" campaign. (*Ibid.*)

11 C. Armstrong's Failure To Sign The Agreement Would Result In Further Fair Game

12 Flynn told Armstrong that if he didn't sign the agreement, Armstrong would continue to be
13 targeted for further fair game activities. (*Id.* at ¶ 1, C) Flynn also told Armstrong that the other fifteen people
14 involved in the "global settlement," of which the Armstrong agreement was a part, would continue to be
15 attacked by Scientology. (*Id.* at ¶ 1,D)

16 D. Scientology's Inducement For Armstrong's Execution Of The Agreement Was
17 Fraudulent Because It Never Intended To Abandon Its Practice Of Fair Game

18 Prior to Armstrong's signing of the agreement, attorney Flynn advised him that as part of the
19 agreement Scientology had promised to cease all of its fair game activities and attacks against Armstrong
20 and others. (*Id.* at ¶ 98) In consequence, paragraph 7-I of the settlement agreement states "... the "slate" is
21 wiped clean concerning past actions by any party." Paragraph 18-D states that the agreement is
22 confidential and the parties however may state the civil action was settled. Paragraph 18-D stated that the
23 parties agreed to forbear and refrain from doing any act or exercising any right which was inconsistent with
24 the agreement. (*Id.* at ¶ 99)

25 Scientology attorney Lawrence Heller, who is the representative of Scientology depicted on the
26 videotape of Armstrong's signing of the agreement, advised one court in 1989 in a motion to quash a
27 deposition subpoena served on Gerald Armstrong (that was based on the agreement) that he "was personally
28 involved in the [1986] settlement" and stated under oath "The non- disclosure obligations were a key part of

[CT 8256]

1 the settlement agreements insisted upon by all parties involved." (*Id.* at ¶ 101) He further stated,

2 "One of the key ingredients to completing these settlements, insisted upon by all parties involved,
3 was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences
4 with the Church of Scientology; (2) any knowledge possessed by the Scientology entities
5 concerning those staff members or parishioners."

6 (*Id.* at ¶ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that Scientology had
7 obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

8 Since Scientology signed the agreement, it did not cease all fair game attacks against him. (*Id.*
9 at ¶ 105) Said attacks included (1) delivering "dead agent" documents to various media representatives (*Id.* at
10 ¶ 105, A); (2) publishing its own false descriptions of Armstrong's Scientology experiences (*Id.* at ¶ 105,
11 B); (3) disseminating to the media an edited, misleading and defamatory version of an illegal videotape
12 that Scientology agents had made of him (*Id.* at ¶ 105, C); (4) disseminating documents from the original
13 *Armstrong* litigation which Scientology had demanded be sealed (*Id.* at ¶ 105, D); (5) filing affidavits
14 about him in a lawsuit in England which falsely stated that Armstrong violated court orders and was an
15 admitted agent provocateur of the U.S. Government (*Id.* at ¶ 105, E); (6) threatening to sue Armstrong if
16 he even talked to attorneys in the English case where false statements were being made about him (*Id.* at ¶
17 105, F); (7) threatening to expose Armstrong's private writing if he failed to help prevent a litigant from
18 gaining access to the original *Armstrong* case file (*Id.* at ¶ 105, F); (8) threatening him with being sued if
19 he testified about Scientology pursuant to a subpoena (*Id.* at ¶ 105, G); and (9) threatening to sue
20 Armstrong for attending the public hearing on its motion to quash service of the deposition subpoena with
21 which he had been served. (*Id.* at ¶ 105, H.)

22 If Armstrong had known that the way the settlement agreement would have been interpreted and
23 enforced was that Scientology was free to attack him or anyone else, that it was going to continue fair
24 game as before the agreement's execution, and that he would be legally unable to respond to attacks on his
25 reputation or otherwise defend himself and others, he would have never signed the agreement for all the
money in the world. (*Id.* at ¶ 104)

The first action by Armstrong regarding Scientology's post-settlement fair game attacks on him was

26 to file petitions in the Court of Appeal requesting permission to participate in the then-pending appeal that
27 Scientology had taken from the 1984 decision in the *Armstrong* case, and the appeal that Scientology had
28

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[CT 8257]

1 taken from the order unsealing the *Armstrong* court file. Over the objections of Scientology, the Court of
2 Appeal granted Armstrong's petitions (which on their face violated the provisions of 4-B of the
3 agreement), and unsealed the settlement agreement which Armstrong had attached as a "sealed exhibit" to
4 his petitions. (*Id.* at ¶ 106)

5 From the time that Armstrong petitioned the Court of Appeal, Scientology continued its fair game
6 attacks on him which included disseminating "dead agent packs" of "black propaganda" which provided
7 Scientology's false characterizations of Armstrong including that Armstrong (1) testified falsely at trial
8 (*Id.* at ¶ 107, A, a); (2) had "adopted a degraded lifestyle" (*Id.* at ¶ 107, A, b); (3) was "apparently naked"
9 in a newspaper photo (*Id.* at ¶ 107, A, c); (4) is connected to a "referral agency for those who engage in
10 the illegal activity of kidnapping adults" (*Id.* at ¶ 107, A, d); (5) defense at his 1984 trial "was a sham and
11 a fraud" (*Id.* at ¶ 107, A, e); (6) that the Los Angeles Police Department "authorized [Scientology's]
12 surreptitious videotapes of Armstrong (*Id.* at ¶ 107, A, f); (7) conspired to plant fabricated documents in
13 Scientology files and tell the internal Revenue Service to conduct a raid (*Id.* at ¶ 107, A, g); (8) wanted to
14 plunder Scientology for his own financial gain (*Id.* at ¶ 107, A, h); (9) never intended to adhere to the
15 terms of the settlement agreement (*Id.* at ¶ 107, A, i); (10) was motivated in writing attorney Lieberman
16 regarding the *Nothling* litigation by greed and power (*Id.* at ¶ 107, A, j); (11) was incompetent as a
17 researcher on the Hubbard biography project (*Id.* at ¶ 107, A, k); (12) had perjured himself about
18 surrendering documents to the Court (*Id.* at ¶ 107, A, l); and (13) wanted to orchestrate a coup in which
19 members of the U.S. Government would wrest control of Scientology ().

20 Id. at ¶107, A, m

21 In addition to the black propaganda seeking to "dead agent " Armstrong as set forth above, from the
22 time that Armstrong petitioned the Court of Appeal, Scientology continued its attacks on him which
23 included that he was formerly a heavy drug user, paid to provide homosexual sex, is psychotic and lives in
24 a world of delusion. (Id. at ¶ 107, C, a-d) Scientology used transcripts and other documents which it had
25 insisted be sealed in the original *Armstrong* litigation to attack him, (Id. at ¶ 107, B), and stating in the
26 media that Armstrong had posed naked in the newspaper (Id. at ¶ 107, D, E) One of its agents stated that
27 Armstrong has AIDS, and that he and his attorney Ford Greene have a "fuck buddy" relationship. (Id. at ¶
28 107, F, G) Scientology has filed declarations in various courts containing false charges about Armstrong,
and then using the settlement agreement to prevent or punish him from or for responding thereto. (Id. at ¶ 107, I)

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[CT 8258]

1 It has attempted to have Armstrong jailed for contempt of court based on mischaracterizations of
2 his actions in conjunction with the manufacture of evidence: (Id. at ¶ 107, I) Scientology provided
3 documents to *Premiere Magazine* regarding Armstrong including partial transcripts of the illegal Ingram
4 videotaping of Armstrong and then using the settlement agreement to punish Armstrong for responding
5 thereto. (Id. at ¶ 107, J) Scientology has perpetrated fair game actions on Armstrong's friends and
6 associates including Ford Greene, Hana Whitfield, Dennis Erlich, Lawrence Wollersheim, Jonathan Attack,
7 Margery Wakefield, Nancy McLean and Malcolm Nothling. (Id. at ¶ 108)

8 E. Reasons Why The Settlement Agreement Cannot Be Specifically Enforced

9 Scientology's interpretation of the settlement agreement is that it can say whatever it wants about
10 Armstrong to anyone in any form, and that he has no right to respond thereto. (Id. at ¶ 109)
11 Armstrong has been subjected to Scientology's policy of fair game since 1982. (Id. at ¶ 110)
12 Armstrong's original cross-complaint against Scientology for fraud and years of fair game was set in
13 December 1986 for trial in March 1987. (Id. at ¶ 111) Scientology promised to pay money, cease fair

14 game against him and others, and execute a general release. Armstrong promised to dismiss his cross-
15 complaint and execute a general release. Neither side was to use information about the other in the future
16 so that there would be a "clean slate" between them. Armstrong never agreed and the agreement does not
17 state that Scientology may say or publish whatever it wants about Armstrong, and that he waived the right
18 to respond to such statements. (*Id.* at ¶ 112)

19 Mr. Flynn advised Armstrong that Scientology was paying Armstrong to dismiss his cross-
20 complaint and release it from liability for its acts prior to settlement. Armstrong never agreed to continue
21 to be fair game, a punching bag, willing victim, or a tool for Scientology's obstruction of justice. He
22 would never do so for any amount of money. (*Id.* at ¶ 116-117)

23 Although the agreement states that Armstrong waived his right to oppose Scientology's appeal of
24 Judge Breckenridge's 1984 decision, the Court of Appeal nonetheless allowed Armstrong to so do. (*Id.* at
25 ¶ 113-115) In addition, a trial judge has condemned the agreement as one-sided and fundamentally unfair.

26 "So my belief is Judge Breckenridge, being a very careful judge ... if he had been presented
27 with that whole agreement and if he had been asked to order its performance, he would have dug
28 his feet in because that is one ... I'll say one of the most ambiguous, one-sided agreements that I
have ever read. And I would have not ordered the enforcement of hardly any of the terms if I had
been asked to, even on the threat that okay, the case is not settled. [¶] I know we like to settle

-5-

[CT 8259]

1 cases. But we don't like to settle cases and; in effect, prostrate the court system into making an
2 order which is not fair or in the public interest."

3 (*Id.* at ¶ 120) By dint of contract, Scientology has prevented Armstrong's witnesses, including his former
4 attorneys Michael J. Flynn, Bruce Bunch and Julia Dragojevic - from providing evidence to Armstrong in
5 the instant action. Were they not so constrained, they would provide evidence devastating to Scientology.

6 (*Id.* at ¶ 121-125)

7 F. Scientology's Hands Are Unclean

8 Based on Scientology's declaring Armstrong to be a suppressive person so as to subject him to its
 9 fair game policy, Judge Breckenridge ruled that Scientology did not have "clean hands" as to Armstrong.
 10 (*Id.* at ¶126) Judge Breckenridge's decision was affirmed in its totality by the Court of Appeal which
 11 stated that the "declares" subjected Armstrong to the "Fair Game Doctrine" "which permits a suppressive
 12 person to be 'tricked, sued, or lied to or destroyed ... [or] deprived of property or injured by any means by
 13 any Scientologist." (*Id.* at ¶ 127) Following the Breckenridge decision Scientology continued to subject
 14 Armstrong, and his attorney Michael J. Flynn, to fair game. (*Id.* at ¶ 128- 129) Scientology promised to
 15 discontinue fair game against Armstrong and others as an inducement for settlement, and continued fair
 16 game against Armstrong since the settlement. (*Id.* at ¶ 130)

17 Prior to Armstrong speaking publicly about his experiences in Scientology, it engaged him in a
 18 public controversy by publishing and disseminating its own versions of his experiences, and had continued
 19 thereafter to publish and disseminate its versions of his experiences. (*Id.* at ¶ 131) Scientology claims by the
 20 settlement that it is free to comment on Armstrong, but that Armstrong is prohibited from commenting
 21 in response. (*Id.* at ¶ 132) Scientology characterizes Armstrong's statements, which it claims it is free to
 22 comment on, as "often bizarre allegations." (*Id.* at ¶ 133)

23 G. On Its Face, And As Applied, The Agreement Obstructs Justice

24 Scientology lawyer Lawrence Heller testified that "[a]t the time of the Armstrong settlement,
 25 information from Mr. Armstrong was being used in a number of cases around the world."(*Id.* at ¶ 134)
 26 Scientology staff member Kenneth Long stated in a declaration executed January 19, 1995, that prior to
 27 December 1986, Armstrong had testified in 15 cases for a total of 28 trial days, and had executed 28
 28 declarations in 15 cases all of which concerned Scientology and/or its related entities. Long characterizes

1 Armstrong as "an anti-Church litigant and a professional witness against the Church in other litigation" and

2 "a paralegal who worked extensively on anti-Church cases." (*Id.* at ¶ 136) In Armstrong's opinion "[t]he
 3 whole set of 'settlement agreements,' which are commonly known as the Flynn agreement,' are unfair to
 4 anyone who litigates either as a defendant or plaintiff against Scientology, since these agreements remove
 5 knowledgeable witnesses from the legal arena and drive up litigation costs. The 'agreements' are also
 6 unfair to the public because they allow Scientology's leaders to rewrite history, lie about judicially credited
 7 information, attack the sources of that information without response, and convey the idea that it is futile to
 8 speak the truth or oppose their tyranny." (*Id.* at ¶ 137)

9 H. Armstrong's experiences In Scientology Are Religious In Nature

10 Scientology holds itself out as a religion which identifies its scriptures as the writings and spoken
 11 words of L. Ron Hubbard. (*Id.* at ¶ 140-141) The purpose of Scientology's religious orders is to carry out
 12 the religious and administrative activities of Scientology. (*Id.* at ¶ 140-141.) From 1971 through 1981,
 13 Armstrong was a member of Scientology's religious order, the Sea Organization, which is the period of
 14 almost all of his significant experiences with Scientology. (*Id.* at ¶ 144) Armstrong believes that his
 15 experiences in Scientology are religious, that God guided him to see that the faith he had put in L. Ron
 16 Hubbard and Scientology was misplaced, that God kept him from being completely taken over by
 17 Scientology's indoctrination, mind control, threats and punishments, and that God kept Armstrong's heart
 18 from hardening despite the way that Scientology treated him. (*Id.* at ¶ 146) Armstrong also believes that
 19 God led him into L. Ron Hubbard's archives and biography project in order to study Hubbard's secret
 20 papers so as to document Hubbard's duplicity and to free Armstrong's faith from Scientology where it had
 21 been misplaced. (*Ibid.*) Armstrong believes that God both protected Armstrong (*Id.* at ¶ 147) let him be
 22 terrorized and set up by Scientology. (*Id.* at ¶ 148) Armstrong also believes that God brought him and his
 23 attorney Michael Flynn together to fight the evil of Scientology. (*Id.* at ¶ 149) Armstrong believes that
 24 God speaks to him, and in 1986 founded a church. (*Id.* at ¶ 150)

25 Armstrong believes that God allowed Scientology to harass, threaten and compromise Flynn, and
 26 allowed Flynn to "lose heart" and have Armstrong agree to the instant settlement agreement. (*Id.* at ¶ 151-
 27 152) Armstrong believes that God allowed Flynn to respond to Armstrong's objections about the

28 impossibility of the agreement and the liquidated damages clause by saying, "Gerry, it's not worth the

-7-

[CT 8261]

1 paper it's printed on. You can't contract away your Constitutional rights" and that Scientology was paying
2 Armstrong to dismiss his lawsuit. (*Id.* at ¶ 152) Armstrong believes that God kept him from responding to
3 Scientology's violations of the settlement agreement until he was served with a deposition subpoena at
4 which time Armstrong believes that God brought him to a determination to do what he could to bring to
5 light and correct injustice and evil. (*Id.* at ¶ 155)

6 **III. ARMSTRONG HAD NO FREEDOM OF CONSENT**

7 **A. Duress And Menace**

8 An essential element of a contract is consent. (*Civil Code § 1550 (2).*) An apparent consent is not
9 real or free when it has been obtained through duress or menace. (*Civil Code § 1567 (1)(2).*) Sections
10 1569 (1) and (3) of the Civil Code defines duress as the (1) "[u]nlawful confinement of the person of the
11 party, . . ." or (2) "[c]onfinement of such person, lawful in form, but fraudulently obtained, or fraudulently
12 made unjustly harassing or oppressive." The cases, however, have established much broader definitions,
13 and consequently, the language of the decisions can rarely be reconciled with the statutory language. For
14 example, in *Harlan v. Cladding, McBean & Co.* (1907) 7 Cal.App. 49, duress means a condition of mind
15 produced by improper external pressure or influence that practically destroys the free will of a person and
16 causes him to do an act or enter into a contract not of his own volition. In *Sistrom v. Anderson* (1942) 51
17 Cal.App.2d 213, duress is effectuated by an unlawful threat which overcomes the will of the person
18 threatened and induces him to do an act that he is not bound to do and would not otherwise have done.
19 *Steffen v. Refrigeration Discount Corp.* (1949) 91 Cal.App.2d 494, states that the test of duress, at its
20 harshest, is what would have influenced the conduct of a reasonable man. Indeed, the modern tendency is
21 to find duress wherever one, by the unlawful act of another, is induced to make a contract under

circumstances which deprive him of the exercise of free will. See *Keithley v. Civil Service Board* (1970) 11 Cal.App.3d 443; *Balling v. Finch* (1962) 203 Cal.App.2d 413; *Gross v. Needham* (1960) 184 Cal.App.2d 446; *Lewis v. Fahn* (1952) 113 Cal.App.2d 95; *Sistrom*, 51 Cal.App.2d at 213. Under this standard, duress is to be tested, not by the nature of the threat, but by the state of mind induced in the victim. *Balling*, 203 Cal.App.2d at 413; *Lewis*, 113 Cal.App.2d at 95.

Menace is defined as a threat of unlawful and violent injury to a party (*Civil Code* § 1570 (2)) or injury to the character of such person. (*Civil Code* § 1570 (3) .)

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[CT 8262]

"Menace" means something different from "force." Thus, a mere verbal threat to have a mother arrested and to take her children from her constitutes a "menace." [Citation.] The essential function played by the concept of "menace" is to avoid or vitiate consent to an act, so that the act cannot be said to constitute an exercise of free will. [Citation.] Thus, for example, mere persuasion, which, in fact, convinces someone to do something, does not constitute coercion or menace. [Citation.]

(*People v. Cicero* (1984) 157 Cal.App.3d 465, 478) If a party exerts unlawful pressure on the injured party in order to deprive him of contractual volition and induce him to act to his own detriment, consent thereto is said to have been vitiated by menace. (*Goldstein v. Enoch* (1967) 248 Cal.App.2d 891, 894-895)

Ever since Armstrong left Scientology in 1981, Scientology, having declared him an enemy, a "suppressive person," subjected him to certain actions, pursuant to its fair game policy, which constituted duress and menace. (*Sep.St.* ¶ 1, A) Such acts included assaulting him, spying on him, filing false charges with the Los Angeles County District Attorney and with the Federal Bureau of Investigation, efforts to entrap him, illegal surveillance and videotaping, battery with a car driven by a hired agent, attempting to involve Armstrong in a freeway accident, filing false declarations, international publications falsely accusing him of crime (so-called "black propaganda"), filing false contempt of court charges, and disseminating confidential statements by Armstrong in pastoral counseling sessions. (*Ibid.*)

Prior to the execution of the settlement agreement in later 1986, Armstrong's lawyer, Michael

Flynn had also been the subject of the unrelenting application of Scientology's fair game policy. (Sep.St. Defendant's Evidence ¶ 1, B.) Such fair game actions included infiltrating Flynn's office, paying known criminals to testify falsely against him, suing him, framing him with a forgery of a \$2,000,000 check, and subjecting him to an international "black propaganda" campaign. (*Ibid.*)

Flynn told Armstrong that if he didn't sign the agreement, Armstrong would continue to be targeted for further fair game activities. (*Id.* at ¶ 1, C) Flynn also told Armstrong that the other fifteen people involved in the "global settlement," of which the Armstrong agreement was a part, would continue to be attacked by Scientology. (*Id.* at ¶ 1, D).

Given Scientology's unrelenting attacks on Armstrong, his lawyer and all the "enemies" whom Mr. Flynn represented, it is clear that Armstrong's consent to the agreement was obtained by duress and menace, and therefore not free.

B. Fraud

The elements of actual fraud, whether in contract or in tort, have been stated as follows: There

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[CT 8263]

must be (1) a false representation or concealment of a material fact (or, in some cases, an opinion) susceptible of knowledge, (2) made with knowledge of its falsity or without sufficient knowledge on the subject to warrant a representation, (3) with the intent to induce the person to whom it is made to act upon it; and such person must (4) act in reliance upon the representation (5) to his damage. (*Harding v. Robinson* (1917) 175 Cal. 534, 538; *Wolfe v. Severns* (1930) 109 Cal.App. 476, 485; 1 Witkin, *Summary of California Law* § 393.)

The act constituting actual fraud may be concealment or "any other act fitted to deceive." Specifically, "[t]he suppression of that which is true, by one having knowledge or belief of the fact" is actual fraud. (*Civil Code* § 1572 (3); *Williamson & Vollmer Engineering v. Sequoia Ins. Co.* (1976) 64

10 Cal.App.3d 261, 273; 1 Witkin, *Summary of California Law*, § 398.) The Restatement points out that
11 concealment is an affirmative act, equivalent to a misrepresentation (comment a), and that it usually
12 consists either in actively hiding something from the other party, or preventing him making an
13 investigation that would have disclosed the true facts (Comment b).

14 The purpose of the catch-all statement, "any other act" is suggested in *Wells v. Zenz* (1927) 83
15 Cal.App. 137.

16 "Fraud is a generic term which embraces all the multifarious means which human ingenuity can
17 devise and are resorted to by one individual to get an advantage over another. No definite and
18 invariable rule can be laid down as a general proposition defining fraud, and it includes all surprise,
trick, cunning, dissembling, and unfair way by which another is deceived. The statutes of
California expressly provide that . . . any other act fitted to deceive is actual fraud."

19 In the instant case, Scientology represented to Armstrong that a primary reason for the settlement
20 was to provide it with an opportunity to cease its fair game activities against him and others. Since it is
21 clear that Scientology not only did not cease such activities, but never intended to do so, Armstrong's
22 consent to the agreement was vitiated. (*Civil Code* § 1565, 1567)

23 C. Even If The Contract Was Not Obtained By Duress, Menace, And Fraud, Scientology
24 Cannot Enforce The "Confidentiality" Provisions Because It Breached The Express And
Implied Covenant That It Would Say Nothing About Armstrong After The Settlement.

25 **1. Confidentiality Was Contractually Reciprocal ¹**

26
27
28 ¹ Armstrong asks the Court to realize that this argument was never presented to Judge Sohigian when
the parties litigated the preliminary injunction in May 1992.

1 Paragraph 7-I of the agreement states that the slate between Scientology and Armstrong is wiped
2 clean and that neither party shall use in the future any information obtained regarding the other that was the
3 subject of the settled litigation. (*Sep.St.* 99) The parties' intent in this regard was clearly articulated by

4 Scientology attorney Lawrence Heller almost three years later.

5 On or about November 1, 1989, in the case entitled *Corydon v. Church of Scientology*
6 *International, Inc., et al.*, LASC No. C694401, Scientology attorney Lawrence E. Heller filed a motion to
7 prevent Armstrong from testifying pursuant to subpoena. In his memorandum, Heller discussed the "block
8 settlement" of which the Armstrong agreement was a part. He stated:

9 One of the key ingredients to completing these settlements, insisted upon by all parties
10 involved, was strict confidentiality respecting: (1) the Scientology ... staff member's experiences
11 with ... Scientology; (2) **any knowledge possessed by the Scientology entities concerning those**
12 **staff members** ...; and (3) the terms and conditions of the settlements themselves. Peace has
reigned since the time the interested parties entered into the settlements, all parties having exercised
good faith in carrying out the terms of the settlement, including the obligations of confidentiality.
[Underlining is original emphasis.]

13 (Sep.St. 102: Ex. 1 (A)(D) at 4:9-19.) In his sworn supporting declaration, attorney Heller testified:

14 I was personally involved in the settlements which are referred to in these moving papers
15 which transpired some two and one-half years ago. Those settlements concerned well over a dozen
16 plaintiff litigants as well as various Church of Scientology entities . . . Settlement negotiations,
17 which were not supervised by any court, were arduous and, as is often the case in these instances,
sometimes contentious. However, a "universal settlement" was ultimately entered into between the
numerous parties. The universal settlement provided for non-disclosure of all facts underlying the
litigation as well as non-disclosure of the terms of the settlements themselves. The non-disclosure
obligations were a key part of the settlement agreements insisted upon by all parties involved.
[Original emphasis.]

18 (Sep.St. 101: Ex. 1 (A)(D) at 8:15-9:7.)

19 The principles concerning the interpretation of contracts are well settled. Paramount among these
20 rules are the following:

21 [T]he contract must be construed as a whole and the intention of the parties must be ascertained
22 from the consideration of the entire contract, not some isolated portion [citations]; a contract
23 entered into for the mutual benefit of the parties is to be interpreted so as to give effect to the main
purpose of the contract and not to defeat the mutual objectives of the parties [citations]; language
which is inconsistent with the objective of the contract shall be rejected [citations]. Also, where a
contract is susceptible of two interpretations, the courts shall give it such a construction as will
24 make it lawful, operative, definite, reasonable and capable of being carried into effect if it can be
done without violating the intention of the parties [citations]. And last, but not least, the court shall
25 avoid an interpretation which will make a contract extraordinary, harsh, unjust, inequitable or
which would result in absurdity [citations].

26 (County of Marin v. Assessment App. Bd., Marin City (1976) 64 Cal.App.3d 316, 325.)
27
28

[CT 8265]

1 That which is necessarily implied in the language of a contract is as much a part of it as that which
2 is expressed. (*Wal-Noon Corp. v. Hill* (1975) 45 Cal.App.3d 605, 611-12.) A contract includes not only
3 what is expressly stated, but also what is necessarily implied from the language used. (*Mercer v. Lemmens*
4 (1964) 230 Cal.App.2d 167, 171.) Where express covenants fail to cover phrases necessary to make
5 workable and meaningful the covenants expressed, implied covenants may be resorted to. (*Foley v. US.*
6 *Paving Co.* (1968) 262 Cal.App.2d 499, 505-06.) Stipulations which are necessary to make a contract
7 reasonable are implied in respect to matters as to which the contract manifests no contrary intention.
8 (*Straus v. North Hollywood Hospital* (1957) 150 Cal.App.2d 306, 309 P.2d 541, 545.) A fair and
9 reasonable interpretation of a contractual provision, rather than one leading to harsh, unreasonable or
10 inequitable results, is always preferred. (*Ibid.*) When the law implies a promise from the terms of a written
11 contract, the promise is as much a part of the .contract as if it were written out. (*Amen v. Merced County*
12 *Title Co.* (1962) 58 Cal.2d 528, 532.) Unexpressed provisions of a contract may be inferred from the
13 writing or from external facts. (*California Lettuce Growers v. Union Sugar Co.* (1955) 45 Cal.2d 474, 289
14 P.2d 785, 790.) The rules controlling the exercise of judicial authority to insert implied covenants require
15 several concurrent conditions: (1) the implication must arise from the language used or it must be
16 indispensable to effectuate the intention of the parties; ² (2) it must appear from the language used that it
17 was so clearly within the contemplation of the parties that they deemed it unnecessary to express it; (3)
18 implied covenants can only be justified on the grounds of legal necessity; (4) a promise can be implied
19 only where it may be rightfully assumed that it would have been made if attention had been called to it;
20 and (5) there can be no implied covenant where the subject is completely covered by the contract. (*Adkins*
21 *v. Lear, Inc.* (1968) 67 Cal.2d 882, 905; *Addiego v. Hill* (1965) 238 Cal.App.2d 842, 847; *Walnut Creek*
22 *Pipe Distrib. v. Gates Rubber Co.* (1964) 228 Cal.App.2d 810, 815-16.)
23 Both the language of the agreement and the November 1989 declaration and memorandum of

24 Scientology attorney Heller illustrate that confidentiality was indispensable to effectuate the intentions of

25 _____

26 ² One vital element in the construction of a contract is the intention of the parties in relation to its
27 execution. When determining this intention, the court may look to the circumstances surrounding the
28 making of the agreement, including the object, nature, and subject matter of the writing, and thereby place
itself for this purpose in the same situation in which the parties found themselves at the time of contracting.
(*Dunne & Gaston v. Keltner* (1975) 50 Cal.App.3d 560, 564.)

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[CT 8266]

1 both Armstrong and Scientology. Indeed, a review of the agreement makes it clear that both parties desired to
2 terminate their disputatious interactions with one another and leave one another alone. There is
3 nothing in the agreement that states that Scientology could make whatever public statements it wanted to
4 about Armstrong, but that he would have to remain silent no matter what aspersions were cast his way. To
5 impose such a condition would make no sense because it would allow Scientology to slander Armstrong
6 and literally re-write history in order to suit its own ends without any regard to truth or accuracy.
7 Armstrong's history in the litigation before Judge Breckenridge illustrates a profound rejection of any such
8 result.³ Thus, under the circumstances there is a legal necessity for the Court to imply that the settlement
9 terms were reciprocal because it would be grossly unfair to Armstrong since it was never his intent to have
10 his own personal history revised according to the predilections of Scientology, and ultimately be jailed
11 after a Court issued injunctive relief based on the agreement that he could never respond thereto.

12 The agreement expressly states that Armstrong was not to discuss his knowledge or experience
13 with respect to Scientology. Although the agreement is silent whether Scientology was similarly
14 prohibited from discussing its knowledge of Armstrong, Mr. Heller was not. Therefore, to imply that the
15 parties' intention was for Scientology to be subject to the same confidentiality as was Armstrong does not
16 contravene any express term of the agreement and conforms with Mr. Heller's initial representations to the
17 judiciary regarding the intent of the agreement. To imply reciprocity would not violate the intent of the

parties. Indeed, not to imply such a term would violate the expectations of Armstrong and deny him the fruits of his bargain. "If without the implied obligation the fruits of the contract would be denied to one of the parties, the intent that such an obligation should not exist must clearly appear from the express terms of the contract." (*Bergum v. Weber* (1955) 136 Cal.App.2d 389, 288 P.2d 623, 626.) Moreover, the "clean slate" provision supports the conclusion that the confidentiality provisions were reciprocal, and rebuts the conclusion that the parties intended that Scientology could say whatever it wanted about Armstrong, and that it could sue him if he tried to respond.

2. Scientology Breached The Implied Covenants of Confidentiality And Of Good Faith And Fair Dealing

³ See generally, Ex. 1(A)(A), Memorandum of Intended Decision, *Church of Scientology of California v. Armstrong*, Los Angeles County Superior Court, Case No. C 420153.

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[CT 8267]

In addition to the duties imposed upon the parties to a contract by the terms of their agreement, the law implies in every contract a covenant of good faith and fair dealing. (*Seaman's Direct Buying Service, Inc. v. Standard Oil Co.* (1984) 36 Cal.1.3d 752, 768.) The implied promise requires each contracting party to refrain from doing anything to impair the right of the other to receive the benefits of the agreement. (*Betts v. Allstate Ins. Co.* (1984) 154 Cal.App.3d 688, 705.) This covenant not only imposes upon each contracting party the duty to refrain from doing anything which would render performance of the contract impossible by any act of his own, but also the duty to do everything that the contract presupposes that he will do to accomplish its purpose. (*McWilliams v. Holton* (1967) 248 Cal.App.2d 447, 451.) The precise nature and extent of the duties imposed by such implied promise will depend upon the nature and purpose of the underlying contract and the legitimate expectations of the parties. (*Tollefson v. Roman Catholic Bishop* (1990) 219 Cal.App.3d 843, 854.) Thus, regardless of its origin, the covenant of good faith and fair

12 dealing is designed to effectuate the intentions and reasonable expectations of the parties reflected by
13 mutual promises within the contract. (*Ibid.*)

14 With respect to the agreement at bar, Scientology acted in bad faith by unfairly depriving
15 Armstrong of the benefit of the bargain of the settlement agreement. Rather than leave its history with
16 Armstrong to rest silently in the past insulated by mutual promises of confidentiality, Scientology
17 resurrected its old conflict with Armstrong when to do so suited whatever was its particular litigation or
18 public relations strategy of the moment. Such conduct violates the implied covenant of good faith and fair
19 dealing and excuses counter-performance by Armstrong.

20 **3. Due To Its Breaches, Scientology Cannot Enforce**

21 **Reciprocal Provisions Of The Agreement Against Armstrong**

22 A party complaining of a breach of contract is not entitled to recover therefor unless he has fulfilled
23 his obligations. He who seeks to enforce a contract must show that he has complied with the conditions
24 and agreements of the contract on his part to be performed. (*Pry Corporation of America v. Leach* (1960)
25 177 Cal.App.2d 632, 639.) A covenant is a promise to render some performance. A breach of covenant
26 excuses the other party's performance. (Witkin, 1 *Summary of California Law* (1987) Contracts, § 723,
27 757.) Thus, one who himself breaches a contract cannot recover for a subsequent breach by the other
28 party, (*Silver v. Bank of America* (1941) 47 Cal.App.2d 639, 118 P.2d 891, 894), because a party to a

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[CT 8268]

1 contract need not tender performance if the conduct of the other party amounts to a refusal to perform.
2 (*United California Bank v. Maltzman* (1975) 44 Cal.App.3d 41, 52.)

3 Scientology repeatedly breached its covenant to remain silent about Armstrong. (Sep.St. 105 (D-
4 H) Scientology cannot have it both ways.

5 D. Scientology Has Not Met Its Burden Which Would Entitle It To Injunctive Relief

Because It Is Not Entitled To The Equitable Remedy Of Specific Performance

As the basis for injunctive relief, Scientology relies upon the legal conclusion that the agreement can be specifically enforced. (Moving Memorandum at p. 16:3-25.) Upon applying *Civil Code* section 3391 to the circumstances of this case, however, Armstrong cannot be compelled to specifically perform the agreement. ⁴ An injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. (*Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.* (1967) 255 Cal.App.2d 300, 304, 63 Cal.Rptr. 148.)

It is rote that "equity will not lend its aid to enforce contracts which upon their face are so manifestly harsh and oppressive as to shock the conscience; it must be affirmatively shown that such contracts are fair and just." (*Jacklich v. Baer* (1943) 57 Cal.App.2d 684, 135 P.2d 179, 183.) The rationale for this rule is grounded in a common sense recognition of the rules of fair play, not fair game.

It is said . . . that the doctrine that he who seeks equity must do equity means that the party asking the aid of the court must stand in a conscientious relation to his adversary; that the transaction from which his claim arises must be fair and just and that the relief itself must not be harsh and oppressive upon the defendant. And that specific performance will always be refused when a contract itself is unfair, one-sided, unconscionable, or affected by any other such inequitable feature, and when specific performance would be oppressive upon the defendant, or would prevent the enjoyment of his own rights, or would in any other manner work injustice.

(*Id.*, 135 P.2d at 184; *Chriddenden v. Hansen* (1943) 59 Cal.App.2d 56, 138 P.2d 37, 38.)

⁴ In full, *Civil Code* section 3391 states:

"WHAT PARTIES CANNOT BE COMPELLED TO PERFORM. Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;
2. If it is not, as to him, just and reasonable;
3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or
4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in the case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced."

[CT 8269]

1 The burden is on the plaintiff to plead and prove "that the contract is not inequitable or
2 unconscionable" in order to support a decree of specific performance. (*Quan v. Kraseman* (1948) 84
3 Cal.App.2d 550, 191 P.2d 16, 17.)

4 The primary issue with respect to fairness is whether it is fair for the Court to support
5 Scientology's position that it purchased Armstrong's First Amendment Right to Free Speech with respect to
6 activities (concerning which Scientology would otherwise assert falls within its First Amendment Right to
7 Free Exercise of Religion because it involves the time Armstrong was a practicing Scientologist) which for
8 Armstrong constitutes an unquestionably religious experience twelve years in duration, for \$800,000. That
9 is an undeniably large sum of money. Scientology, however, did not purchase Armstrong's silence without
10 also giving up its right to talk about him. When determining what Scientology's money bought, the
11 court must consider the overall context of the litigation and the relations of the parties in December 1986.
12 In June 1984, Judge Breckenridge had severely condemned Scientology when holding for defendant
13 Armstrong in the original litigation. ⁵ Armstrong's cross-complaint seeking compensation for
14 Scientology's fair game actions against him involved serious charges of heinous misconduct was set for
15 trial in early 1987. In July 1986 a Los Angeles County Superior Court jury had awarded Lawrence
16 Wollersheim \$5,000,000 in compensatory damages and \$25,000,000 in punitive damages against
17 Scientology. Mr. Heller confirmed that the intention of the parties in the settlement was not only that
18 Armstrong not to talk about Scientology, but also that Scientology would not talk about him. In light of
19 these facts, the issue no longer is as clear cut as Scientology presents: it bought Armstrong's First
20 Amendment Free Speech Rights for \$800,000. Indeed, it appears that Scientology bought a dismissal of a
21 potentially explosive cross-complaint and agreed to bury the hatchet.

22 Scientology does not make a single allegation that Armstrong broke his covenant of silence prior to
23 1991. The record is replete, however, with Scientology's breaches of its obligation to maintain silence as
24 to Armstrong. It would be fundamentally unreasonable and unfair, in light of all the facts, for a Court to
25 allow Scientology to say whatever it wants about Armstrong, and to require Armstrong to remain mute in

26

27 ⁵ Judge Breckenridge also stated that "Defendant and his counsel are free to speak or communicate
28 upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit
received in evidence or marked for identification..." (Ex. 1 (A)(A) at 3:3-6)

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[CT 8270]

1 the face of such attacks. Since Scientology has not done equity under the terms of the agreement as
2 interpreted by its lead settlement counsel, he cannot ask this Court to enjoin Armstrong from speaking
3 about it.

4 E. The Agreement Obstructs Justice

5 In addition to the arguments which relate to the unenforceability of the agreement, it is also void
6 against public policy. What Scientology is seeking to do is to remove Armstrong, and all others like him,
7 from playing any role in the truth seeking process, whether such process be in competition found in the
8 public marketplace of ideas, or in the truth-seeking forum provided by the judiciary. Thus, by eliminating
9 those who are knowledgeable of its history and practices, Scientology seeks, quite literally, to shape public
10 opinion and skew judicial decision-making by writing its own script. Thus, with no regard for the truth,
11 Scientology may rest secure in the knowledge that it has purchased the silence of witnesses adverse to it
12 and the Courts will enforce it.

13 The consideration of a contract must be lawful. (*Civil Code* § 1607.) If any part of the
14 consideration is unlawful the entire contract is void. (*Civil Code* § 1608.) Consideration is unlawful if it is
15 contrary to an express provision of law, contrary to the policy of express law, though not expressly
16 prohibited, or otherwise contrary to good morals. (*Civil Code* § 1667.) The object of the contract is the
17 thing which it is agreed, on the party receiving the consideration, to do or not to do. (*Civil Code* § 1595.)
18 The object must be lawful when the contract is made. (*Civil Code* § 1596.) Whether or not a contract in a
19 given case is contrary to public policy is a question of law to be determined from the circumstances of each

20 particular case. (*Bovard v. American Horse Enterprises* (1988) 201 Cal.App.3d 832, 838; *Kallen v. Delug*
21 (1984) 157 Cal.App.3d 940, 951; *Russell v. Soldinger* (1976) 59 Cal.App.3d 633, 642.) It is a
22 fundamental rule of construction of contracts that all applicable laws in existence when an agreement is
23 made, which laws the parties are presumed to know and have in mind, necessarily enter into the contract
24 and form a part of it without any stipulation to that effect, as if they were expressly referred to and
25 incorporated in the agreement. (*People v. Hadley* (1967) 257 Cal.App.2d Supp. 871, 881.) "Agreements
26 to suppress evidence have long been held void as against public policy, both in California and in most
27 common law jurisdictions." (*Williamson v. Superior Court* (1978) 21 Cal.3d 829, 836-37.) In *Brown v.*
28 *Freese* (1938) 28 Cal.App.2d 608, the California Court of Appeal adopted section 557 of the Restatement

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[CT 8271]

1 of the Law of Contracts prohibiting as illegal those agreements which sought to suppress the disclosure of
2 discreditable facts. The court stated:

3 A bargain that has for its consideration the nondisclosure of discreditable facts . . . is illegal. . . .
4 In many cases falling within the rule stated in the section the bargain is illegal whether or not the
5 threats go so far as to bring the case within the definition of duress. In some cases, moreover,
6 disclosure may be proper or even a duty, and the offer to pay for nondisclosure may be voluntarily
7 made. Nevertheless the bargain is illegal. Moreover, even **though the offer to pay for
nondisclosure is voluntarily made and though there is not duty to make disclosure or
propriety in doing so, a bargain to pay for nondisclosure is illegal.** [Emphasis added.]

7 (*Brown* 28 Cal.App.2d at 618.) *Civil Code* § 1668 states:

8 All contracts which have for their object, directly or indirectly, to exempt anyone from
9 responsibility for his own fraud, or willful injury to the person or property of another, or
violation of law, whether willful or negligent, are against the policy of the law.

10 Since an agreement to suppress evidence or to conceal a witness is illegal, (*Witkin*, § 611 at 550.
11 *Penal Code* §§ 136, 136.1, and 138; *Mary R. v. B. & R. Corp.* (1983) 149 Cal.App.3d 308, 196 Cal.Rptr.
12 871; *Tappan v. Albany Brewing Co.* (1889) 80 Cal. 570, 571-572), and the combined effect of the "global
13 settlement" has been to remove the availability as witnesses of most former high-ranking Scientologists,

14 such can "lead to subtle but deliberate attempts to suppress relevant evidence."(*Williamson*, 21 Cal.3d at
15 838.) Thus, where a contract is made either (1) to achieve an illegal purpose, or (2) by means of
16 consideration that is not legal, the contract itself is void. Witkin, *Summary of California Law* (9th Ed.
17 1987) Vol. 1, Contracts, § 441 at 396.

18 Illegal contracts are matters which implicate public policy. Public policy has purposefully been a
19 "vague expression . . . [that] has been left loose and free of definition in the same manner as
20 fraud." (*Safeway Stores v. Hotel Clerks Intn'l Ass.* (1953) 41 Cal.2d 567, 575) Public policy means
21 "anything which tends to undermine that sense of security for individual rights, whether of personal liberty
22 or private property, which any citizen ought to feel is against public policy." (*Ibid.*) Therefore, "[a]
23 contract made contrary to public policy may not serve as the foundation of any action, either in law or in
24 equity, [Citation] and the parties will be left where they are found when they come to court for relief.
25 [Citation.]" (*Tiedje v. Aluminum Paper Milling Co.* (1956) 46 Cal.2d 450, 454)

26 Based on Judge Breckenridge's decision alone, it is clear what Scientology seeks to suppress. The
27 judiciary should not be used for such a purpose.

28
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[CT 8272]

1 F. The First Amendment Precludes Enforcement Of The Agreement

2 Judge Breckenridge found Armstrong to possess a "dedication to the truth" (Ex. 1 (A)(A) at 5:9),
3 and to be "credible [and] extremely persuasive." (*Id.* at 7:9-12) He found that "the Church or its minions
4 is fully capable of intimidation or other physical or psychological abuse if it suits their ends." (*Id.* at 8:3-5)
5 Armstrong communicates with God and God has guided Armstrong to continue his devotion to the truth at
6 whatever cost. Armstrong believes that his entire relationship with Scientology over the past 25 years to
7 have been divinely inspired, and that God has called upon Armstrong to speak out and tell the truth about

8 Scientology in order to protect people from fair game. (Sep.St. 139-174) Scientology, a religion, is asking
 9 the Court to use its power to censor Armstrong's speech regarding his experiences while he was a member
 10 of the Scientology religion, concerning which Armstrong says he was misled into believing and concerning
 11 which error he says God enlightened him. ⁶ Since fair game is a sectarian scripture of the Scientology
 12 religion which includes deception and character assassination as preferred methods of conduct, for the Court
 13 to enforce the agreement and silence Armstrong is to prefer Scientology's malevolent sectarianism over
 14 Armstrong's right to religiously based speech. It must be remembered that Armstrong has done nothing
 15 more than speak. To enforce the agreement not only would violate Armstrong's First Amendment right to
 16 Free Speech and Free Exercise, it would also violate the anti-establishment clause.

17 The First Amendment guarantees of freedom of religion establish liberty of conscience as an
 18 abiding national principle. The realm of individual belief is wholly beyond the power of the state;
 19 "[h]eresy trials are foreign to our Constitution." (*United States v. Ballard* (1944) 322 U.S. 78, 86) But
 20 constitutional protection is not limited to matters of belief. Guaranteeing the "the free exercise" of

21 _____
 22 ⁶ Armstrong has made a number of religiously-based claims which appear on their face to be
 23 incredible, the foremost of which is that God told him, in answer to his prayers, to give away all his
 24 worldly wealth, which he did. Such beliefs and conduct, however difficult to accept, should not result in
 25 the contamination of the Court's attitude toward Armstrong. As stated by our country's highest court, "The
 26 religious views espoused by [Armstrong] might seem incredible, if not preposterous, to most people. But if
 27 those doctrines are subject to a trial before a jury charged with finding their truth or falsity, then the same
 28 can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a
 forbidden domain. The First Amendment does not select any one group or any one type of religion for
 preferred treatment. It puts them all in that position. [Citation.] 'With man's relations to his Maker and the
 obligations he may think they impose, and the manner in which an expression shall be made by him of his
 belief on those subjects, no interference can be permitted, provided always the laws of society, designed to
 secure its peace and prosperity, and the morals of its people, are not interfered with.'" (*United States v.*
Ballard (1943) 322 U.S. 78, 87)

1 religions, the words of the Constitution's text also shields conduct undertaken for reasons of faith. "[T]he

right to the free exercise of religion unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions." (*McDaniel v. Paty* (1978) 435 U.S. 618, 626 (Burger, C.J.) (plurality opinion), See also *Wisconsin v. Yoder* (1972) 406 U. S. 205, 220 ["there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability"]).

The Establishment Clause, providing that the state "shall make no law respecting an establishment of religion ...," (First Amendment to the U.S. Constitution) was a product of religion intolerance experienced by our forebears both in Europe and in the New World. Those who came into conflict with the dominant, government-endorsed religions suffered fines, imprisonment and even death. (*Everson v. Board of Education* (1947) 330 U.S. 1, 9) In reaction to this religious intolerance, the framers of the Constitution concluded that individual religious liberty could be achieved best under a government which was stripped of all power to tax, support or otherwise assist any or all religions, or to interfere with the beliefs of any religion or group. (*Id.* 330 U.S. at 11) The Establishment Clause is far more than a mere prohibition upon the formal establishment of a state church:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor a federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non- attendance.

(330 U.S. at 15-16) Thus, the First Amendment's anti-establishment clause" (*Wollersheim v. Church of Scientology* (1989) 212 Cal.App.3d 872, 884) guarantees citizens that the government will not use its resources to impose religion on us. (*Ibid.*) Since "dead agenting" Armstrong by means of "black propaganda" is an application of fair game as is the use of the law to destroy critics, what is at issue here is Scientology's sectarian doctrine and practice to neutralize " suppressive person" defendant Armstrong. Since this strategy is being exercised by means of judicial force, the Court is preferring the Scientological approach to Truth over the approach employed by Armstrong. Such is not only unconstitutional, it is wrong.

IV. CONCLUSION

28

-20-

[CT 8274]

Based on the foregoing, Defendant Gerald Armstrong respectfully requests that the motion for summary adjudication should be denied.

DATED: September 18, 1995

HUB LAW OFFICES

By: [signed]
Ford Greene

Attorney for Defendant
GERALD ARMSTRONG

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-21-

[CT 8275]

1

PROOF OF SERVICE

2

I am employed in the County of Marin, State of California. I am over the age of eighteen years and

3

am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San

4

Anselmo, California. I served the following documents:

5

DEFENDANT'S OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON TWENTIETH
CAUSE OF ACTION; ARMSTRONG'S SEPARATE STATEMENT OF DISPUTED AND
6 UNDISPUTED FACTS IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF THE
TWENTIETH CAUSE OF ACTION ON THE SECOND AMENDED COMPLAINT; DEFENDANT'S
7 EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON TWENTIETH
CAUSE OF ACTION

8

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed

9

envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo,

10

California:

11

Andrew Wilson, Esquire BY HAND

12

WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
13 San Francisco, California 94104

14

LAURIE J. BARTILSON,ESQ.
Bowles & Moxon
15 6255 Sunset Boulevard

Suite 2000
Los Angeles, California 90028

[X] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: September 18, 1995

[signed]
Ford Greene

-22-

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SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

91

Date: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.

Counsel For
Plaintiff

Gerald Armstrong, et al.

Counsel For
Defendant

FILED
NOV 16 1994
HOWARD HANS
MARIN COUNTY

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

92

Date: May 28, 1992
 Honorable Ronald M. Sohigian, Judge
 1a

M. Cervantes, Deputy Clerk
 None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
 vs.

Counsel For
 Plaintiff

Gerald Armstrong, et al.

Counsel For
 Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.

Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

93

Date: May 28, 1992

Honorable Ronald M. Sohigian, Judge
1bM. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of \$70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES 157680

Date: May 28, 1992

Honorable Ronald M. Sohigian, Judge
lcM. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

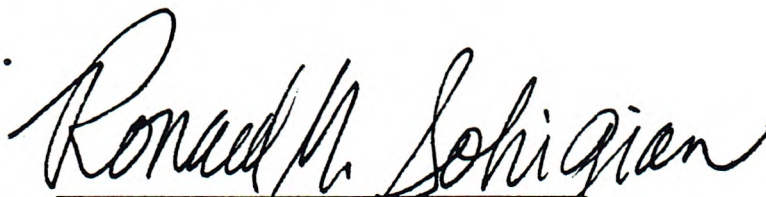
No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.


RONALD M. SOHIGIAN
Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.